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Gloria Randlett

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STATE OF NEW HAMPSHIRE

ORGANIZATIONAL DAY

December 2, 1992

The Clerk, Gloria Randlett, called the Senate to order at 1:00 p.m.

The prayer was offered by the Rev. David P. Jones.

Today is a day about power. You each have power. Ordinary people like me gave it to you in the election. We are watching you now hopefully, to see how you use it over the next two years. You are about to distribute some of that power to a new Senate President. Keep reminding that person, as you remind one another, what a wise man once said: "power is never good, except he or she be good that has it." You each have power. With that power you can crush or you can create - but you cannot do both. So Senators, make your choice today about how you will use this power of ours which we have loaned to you. To do that well, I think you need a prayer: O God of glory and might, as they do their work this day, bring forth from each of these twenty-four good and powerful people the very best that is in them. And as you do that, O Lord, help them to bring forth the very best that is in us as well. Amen.

Senator Blaisdell led the Pledge of Allegiance.

The Clerk called the Roll which showed the following Senators present: Lamirande, W. King, MacDonald, Fraser, Hough, Lovejoy, Currier, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, McLane, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

There were 24 members present.

At that time, on the first Wednesday in December, in the year of our Lord, one thousand nine hundred and ninety two, being the day prescribed by the Constitution for the Legislature of New Hampshire to assemble and Honorable William Gardner, Secretary of State having come into the Senate Chamber, took and subscribed the oaths of office and witnessed the signing of the oath by each individual Senator, and were duly qualified as Senators agreeably to the provisions of the Constitution, namely:

SECRETARY OF STATE, WILLIAM GARDNER: We welcome you returning members and those of you who are here for the very first time. You have a solemn responsibility entrusted upon you by the citizens in

your respective districts from district 1 to district 24. You will either continue to be or become for the first time, a part of the heritage of our General Court, as a member of the state Senate and partake in the preceedings in this historic room the oldest Senate chamber still in use in the nation, dating back to 1819 when this State House was opened. The oath that you are about to take was written as part of our state Constitution, 208 years ago and it has been repeated by every one of your predecessors since that time.

District No. 1	Carole Lamirande
District No. 2	Wayne King
District No. 3	Kenneth MacDonald
District No. 4	Leo Fraser
District No. 5	Ralph Hough
District No. 6	George Lovejoy
District No. 7	David Currier
District No. 8	George Disnard
District No. 9	Sheila Roberge
District No. 10	Clesson Blaisdell
District No. 11	David Wheeler
District No. 12	Barbara Baldizar
District No. 13	Debora Pignatelli
District No. 14	Thomas Colantuono
District No. 15	Susan McLane
District No. 16	Eleanor Podles
District No. 17	John Barnes
District No. 18	John King
District No. 19	Richard Russman
District No. 20	Ann Bourque
District No. 21	Jeanne Shaheen
District No. 22	Joseph Delahunty
District No. 23	Beverly Hollingworth
District No. 24	Burton Cohen

NOMINATIONS

CLERK, GLORIA RANDLETT (In the Chair): The Senate will now be in order. Nominations are now in order for the Temporary Presiding Officer.

SENATOR DELAHUNTY: I move that Senator Dupont be elected temporary presiding officer.

Senator Disnard seconded the motion.

CLERK, GLORIA RANDLETT (In the Chair): Further nominations, are there any other nominations?

SENATOR HOUGH: I move that nominations be closed.

Adopted.

Question is on the adoption of Senator Edward Dupont for Presiding Officer.

Adopted, voice vote.

The Clerk requested Senator Bourque and Senator MacDonald to escort Senator Dupont to the rostrum.

Senator Dupont in the Chair.

The Presiding Officer, Senator Edward Dupont, asked for nominations for Office of the President of the Senate.

TEMPORARY PRESIDING OFFICER, SENATOR EDWARD DUPONT (In the Chair): Thank you very much. We are now going to get right down to the business of the day, no speeches on my way out. I did enough of those during the last couple of years. All that I would like to say is that I am leaving with a lot of great memories. For those of you that were here during the last couple of years, again, I offer my sincere thanks. So now we will move on. Nominations are now in order for the President of the Senate.

SENATOR DISNARD: Thank you, Mr. President and fellow Senators. I am proud to place the nomination for position of the President of the New Hampshire Senate with the name of Ralph Hough. Ralph Degnan Hough is a New Hampshire native. He was born in the Hanover, Lebanon area where he still resides with his wife Susan, and his daughter Anna, and his son David. He owns and operates a family business started by his father and mother. In keeping with the family tradition of serving the people of New Hampshire proudly and with dignity, he followed in his fathers footsteps and served three terms in the House of Representatives. He is now in his eighth term in this Senate. Ralph is truly a public servant serving in the citizen legislature. Senator Hough has served on the Banks, Education, Rules, Capital Budget and Senate Finance committees. It is strictly fair and very fair to say that his love for his native state, New Hampshire and the New Hampshire Senate, and his knowledge of the system and of the past are very true. Senator Hough is also of the strong opinion that members of the Senate need to work together to solve problems for the betterment of the state of New Hampshire. Thank you, Mr. President.

Senator McLane seconded the motion.

SENATOR MCLANE: I rise in proud and strong second for the nomination of Ralph Degnan Hough. I have known his mother and his father. He tends towards Susans. He has a wife named Susan and now I am his best friend. I am proud of the plan that Senator Hough has put forward for this Senate for us to work in for the next two years. I would ask all of you that when he is elected, and he will be, to listen carefully to the speech and the plan that he has set out for this Senate. It will make us all proud. I am happy to be the person, the Susan, to second his nomination.

SENATOR DUPONT (In the Chair): Are there any further nominations?

SENATOR PODLES: I move to place the name of Senator Delahunty in nomination for President of the Senate. We are all aware of the problems that will face our state during the 1993-94 legislative session. The Senate will be looked upon to provide the leadership needed to guide our state during these difficult times. Joe Delahunty possesses the personal and the political skills that are needed to effectively guide this body during the next two years. He has served in the Senate for six years; and during that time, he held numerous positions. The experience that he gained in the operation of state government and the legislative process will serve the Senate well. Joe's greatest asset is his ability to bring people together and forge consensus. At a time when many diverse solutions will be proposed for the problems facing our state, the Senate needs a president capable of working within the body as well as with the House and the Governor to bring about solutions. I know of no one capable of

this task than Joe Delahunty. For six years, Joe has proven himself to be a capable and effective leader. The Senate in the state of New Hampshire will be well served with Joe Delahunty as President of the New Hampshire Senate. I urge you to join me and vote for Joe Delahunty as our next Senate President.

Senator Roberge seconded the motion.

SENATOR ROBERGE: Mr. Acting President and ladies and gentlemen of the Senate, I rise to nominate, to second the nomination of Joe Delahunty for Senate President. I have had the opportunity to work closely with Senator Delahunty in the past two years and I have come to know him as an individual who is willing to listen to the concerns and then work out the solutions. All of us who serve in the Senate need to know that our next president will be understanding to our priorities and that he will work with the entire membership to reach compromise and final resolution. I believe Joe Delahuntys' experience in the Senate and people skills make him uniquely qualified to serve as our next Senate President. I urge you to join with me in casting a vote for Joe Delahunty as our next Senate President.

Senator Russman moved that nominations be closed.

Adopted.

A roll call was requested by Senator Podles.

Seconded by Senator Roberge.

The following Senators voted for Senator Hough: Lamirande, W. King, Hough, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted for Senator Delahunty: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes, Russman, Delahunty.

Hough: 13 - Delahunty: 11

Senator Hough is elected the new President of the Senate.

SENATOR DELAHUNTY: And knowing the talents of those who have returned, I know that this Senate will serve the people of our state with honor and distinction. With the election of the Senate President now over, it is time for us to begin our real work and that will require us to work together for the good of our state. Given the challenges that we face, our ability to serve effectively will in great part be determined by our ability to work together. I would move then that the election of Ralph Hough be made unanimous and ask all of you to support this motion. Congratulations, Mr. President, and know that this Senator is ready to assist you anyway that I can to make sure that we serve those who have elected us. Thank you very much.

Senator Delahunty has moved to make the election of Senator Hough as Senate President unanimous.

Adopted.

SENATOR DUPONT (In the Chair): I want to thank you all for allowing me the opportunity to do this. I wish you all good luck during the next two years, thank you. Usually the out-going Senate President is allowed to take the gavel with them, but I have been told that because I have broke so many during the last two years, that they are not going to buy me one to take with me, so I have to give him the one from last year. Senator Hough, congratulations and the best of luck.

Senator Dupont requested that Senators Delahunty and Disnard escort the new President of the Senate, Senator Ralph Degnan Hough to the rostrum.

SENATOR HOUGH: If you would all bear with me for a few moments I would like to make some remarks to this body. Naturally, I wish to thank Senator Delahunty for his kind and gracious motion to make my election unanimous. Joe, you know that I appreciate that. You will be a significant part of this Senate in the next two years. Let me thank all of you for entrusting me with the highest office the Senate can confer upon one of its members. As you know, I love this body and cherish the friendships I have made and the bonds I have forged during the years I have been privileged to serve in this chamber. I would not wish any honor greater than that that you have bestowed upon me this afternoon nor any respect other than that of my colleagues in the New Hampshire Senate. This Senate is a very special body. The 24 of us must not only do the work of our 400 colleagues in the House, but also must harvest the crop they sow. Therefore, the Senate must be more than the sum of its parts. To meet our obligations to the people of New Hampshire, the Senate must be a legislative assembly with a collective independence, integrity, and authority greater than the separate interests, allegiances and personalities of its individual members. For many years presidents of the Senate have respected the unique character of this body by sharing responsibility and authority among Senators of both parties and all persuasions. I intend to continue this tradition by engaging all of you in the work of this Senate. As we work together, a consensus will develop among us. This consensus will breed achievements. And our achievements, not our differences, will ultimately give this Senate the distinctive character by which we will all remember it. At the polls last month, the voters of New Hampshire spoke clearly and directly to those of us they entrusted with the responsibilities of government. Above all, they expressed unequivocal opposition to the introduction of a tax on personal income. At the same time, the voters expressed an impatience with partisan politics matched only by their desire for responsible government. In the 16 years, 8 terms I have been privileged to represent District 5 I, like my colleagues, have devoted my time and energies to issues I believed of utmost importance to the fortunes of our state and my district. However, as President, I must reconcile my interests with my responsibilities to the Senate. To this end, I will not pursue discussion of the tax status of religious organizations in the state of New Hampshire further. Likewise, we must and shall respect the will of the electorate. I intend for this Senate to work together with Governor Merrill in a cooperative spirit to address the challenges facing us within the limits set by the people who for, all intents and purposes, delivered a plebiscite against taxing personal income. As your President, I commit myself to safeguarding the integrity and authority of the Senate as an independent legislative body by working with my colleagues to fulfill the purposes which bind us together, and not letting our legitimate differences distract, divert and divide us. Our common purpose is clear. New Hampshire has passed through the eye of the most severe and prolonged economic storm since the great depression. The lines are still down. And the skies are still cloudy. We are far from the end of the rainbow. During the past four years, our economy lost 50 jobs every day. Each day 50 people in our state have applied for food stamps. Welfare rolls tripled. And 45,000 of our relatives, friends and neighbors remain out of work. And thousands more are working fewer hours and earning lower wages. Our banks, crippled by financial

crisis and hobbled by regulatory pressure, can't provide the credit businesses need to thrive and grow. Our property markets are glutted with unsold homes and empty space which depress values and rents. Under the leadership of Senator Dupont, the Senate seized the initiative. We recognized that the laissez-faire economics of the 1980s was flawed public policy which led to a cycle of boom and bust. The Senate recognized that state government has a legitimate and appropriate role to play in promoting the stability and growth of our economy and providing security and opportunity for our citizens. Government does not create jobs. Private enterprise creates jobs. But, government contributes significantly to fostering the conditions which enable private enterprise to thrive and prosper. With the bold leadership of Senator Dupont and the nonpartisan cooperation of the entire Senate we undertook the most important public policy initiatives I have witnessed in the two decades I have served in the General Court. The economic development measures taken by the Senate addressed the immediate plight and assured the future strength of our economy. The Senate acted with both urgency and vision. The Senate tailored its budget to revive economic growth by providing tax incentives for companies making capital investments and expanding their payrolls. The Senate forged a partnership between the University of New Hampshire and Dartmouth College to marshall our most valuable resource — our brainpower — for the success of private enterprise. The Senate restructed the business finance authority to increase the capital and credit our businesses need to succeed and expand. The Senate took the initiative to expand the port of New Hampshire and Manchester Airport as well as to accelerate the development of Pease Air Force Base. In short, the Senate inspired the most comprehensive economic development program ever undertaken by the state of New Hampshire. We began to position New Hampshire to compete in the global economy and to succeed in the coming century. I intend to continue pursuing the course and purpose Senator Dupont set for the Senate. Indeed, I am all the more honored to accept this office by the privilege of both serving and succeeding Senator Dupont. A great republican, Theodore Roosevelt, reminded us that: "It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena . . . Who strives valiantly; who errs, and comes short again and again, because there is no effort without error and shortcoming; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly . . . ." I am proud and eager to follow Senator Dupont into the arena. In the days and weeks ahead I will work with my colleagues to develop a nonpartisan structure and organization for the Senate which makes the fullest and highest use of the skill, energies and qualities of each Senator, irrespective of partisan allegiances and political persuasions. I believe together we can construct a Senate which will conduct the public business effectively and efficiently in a spirit of cooperation and goodwill. Again, I thank you for entrusting me with this position of leadership and responsibility. I assure you I will do everything in my power to earn and keep your help and support, every bit of which I will need to fulfill the confidence you have placed in me. Thank you.

INTRODUCTION OF GUESTS

Senator McLane placed the name of Gloria Randlett in nomination for Senate Clerk.

SENATOR MCLANE: The person who I am about to nominate for Senate Clerk has been tried under fire. We had a Clerk of the Senate who we all loved very much. In the middle of a session, she took over from that man. She has worked with speed, with integrity, with honesty, with fairness, and she is efficient. I am happy to announce the name of Gloria Randlett as our Clerk.

Senator Blaisdell seconded the nomination.

SENATOR BLAISDELL: This is going to take a lot to get used to I can tell you that, because I have called her different names before. I rise in support of the nomination put in by Senator McLane of Gloria Randlett. Senator McLane touched a very soft spot with me when she mentioned that Gloria took over from our late Clerk, Bill White who I loved so deeply. She has done a very good job and I can tell you that she is the only one in this chamber that could tell me to sit down and shut up, so, that is what I am going to do.

Senator Fraser moved that the nominations be closed and one vote be cast for Gloria Randlett as Clerk of the New Hampshire Senate.

Adopted.

Gloria Randlett is elected Clerk of the New Hampshire Senate.

Senator Roberge moved to place the name of Lois Schmelzer in nomination for Assistant Clerk of the Senate.

SENATOR ROBERGE: Mr. President, and ladies and gentlemen of the Senate, I am proud to nominate our very capable, Lois Schmelzer for reelection as Assistant Senate Clerk.

Senator Podles seconded the nomination.

SENATOR PODLES: Mr. President, it is a pleasure to second the nomination of Lois Schmelzer as Assistant Senate Clerk.

SENATOR HOUGH (In the Chair): Are there any other nominations?

Not recognizing any, Senator Baldizar moved that the nominations be closed and one vote be cast for Lois Schmelzer for Assistant Clerk of the New Hampshire Senate.

Adopted.

Lois E. Schmelzer is elected Assistant Clerk of the Senate.

SENATOR CURRIER: I move that the name of Richard Wiggin be placed in nomination for Sergeant-At-Arms.

Senator Wheeler seconded the motion.

SENATOR WHEELER: Mr. President, it is my pleasure to second the motion for Dick. I have had a fine time rubbing shoulders with him over the last few years. He will do a great job. Thank you.

Senator Lovejoy moved that the nominations be closed and that one ballot be cast for Richard Wiggin, Sergeant-At-Arms.

Adopted.

Richard H. Wiggin is elected Sergeant-At-Arms.

SENATOR LAMIRANDE: I move that the name of Emile Martineau be placed in nomination for Doorkeeper.

Senator Colantuono seconded the motion.

SENATOR COLANTUONO: Thank you, Mr. President. I am happy to second the nomination of our good friend, Emile Martineau as Door-Keeper.

Senator MacDonald moved that the nominations be closed and one ballot be cast for Emile Martineau, Doorkeeper.

Adopted.

Emile Martineau is elected Senate Doorkeeper.

The President administered the oaths of office to the Senate Clerk, Assistant Clerk, Sergeant-At-Arms, and Doorkeeper.

Recess.

Out of recess.

RESOLUTION

Senator Russman moved the following Resolution:

SENATE RULES

RESOLVED, that the rules of the 1992 session be adopted as the rules of the 1993 session and further that these rules may be changed by majority vote for the next two (2) legislative days.

RULES OF THE SENATE

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same biennium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll-Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.

17-A (a) Bills, deadlines for drafting.

17-b Bills, deadlines for information.

17-c Final deadline.

18. Resolutions to be treated as bills.
19. Bills shall have three reading; progress of; time for second and third readings.
20. Bills, printing and distribution.
21. Bills amended only on second reading; filing of amendments.
22. Public hearings to be held and advertised.
23. Amended bills, printed distributed and disposed of.
24. Appropriating money, to whom referred.
25. President to sign bills, etc.
26. Committees, appointment of.

27. Standing Committees.
28. Messages sent to House.
29. Messages, when received.
30. Voting; division of Senate.
31. Visitors to Senate.
32. Hours of meeting.
33. Rules of Senate, how suspended.
34. Rules of Senate, how rescinded.
35. Committee of the whole.
36. President may name member to chair.
37. Senate staff; composition and duties.
38. Senate staff; days of employment.
39. Committees, reports and meetings.
40. Appeal, presiding officer ruling.
41. Motions, no substitution under color of amendment.
42. Conflict of interest.
43. Committee of Conference reports.
44. Personal privilege.
45. Requisition Approval Required.
46. Fiscal notes, requirements.

SENATE RULES

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected one week after the permanent journal copy is placed in the hands of the Senate.
2. No member shall hold conversation with another while a member is speaking in debate.
3. Every member, wishing to speak, shall address the President and when he has finished shall, if having risen to speak, then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate.
5. More than one member rising to speak at the same time, the President shall decide who shall speak first.
6. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order; in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.

9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment to the general appropriations (budget) bill. No motion to suspend this rule shall be permitted.

10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.

11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.

12. When the nays and yeas have been moved by a member and duly seconded by another member, each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.

13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.

14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side, nor unless the notice of such motion be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or on the next day on which the Senate shall be in session within one half hour after the convening of the early session, and any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.

14 (a) Reconsideration of any bills subject to a transfer date established by joint rules must be acted on or before the joint rule deadline, and thereafter shall be null and void.

15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.

16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be

marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.

17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.

17- A (a) No request by a member of the Senate for drafting a bill or a joint resolution, other than the general appropriations (budget) bill or the capital budget bill, shall be accepted by Legislative Services for processing unless the subject matter of the legislation has been filed with Legislative Services no later than Friday October 4, 1991.(old date Thurs. Dec. 12, 1991.)

(b) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless the complete information necessary for drafting such a bill or joint resolution is submitted to Legislative Services not later than 5:00 p.m. on Friday, November 15, 1991. (old date Fri. Dec. 28, 1991.)

(c) Every Senate bill and joint resolution, other than the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 5:00 p.m., on Friday, December 6, 1991. (old date Wed. Jan 9, 1991.)

(d) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.

19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 20, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.

20. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.

21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.

22. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 5 days before hearing in the Senate Calendar.

    (a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, re-refer to committee, inexpedient to legislate, or refer for interim study. Re-refer to committee shall be a committee report only in the first-year session; refer for interim study shall be a committee report only in the second year.

    (b) If a bill is reported re-refer to committee, it shall read re-refer to committee for action in the second-year session. Bills which have been re-referred to the committee on Finance shall be referred by Finance to the original committee to which it was assigned when the senate adjourned from the first session. All re-referred bills shall be reported by the committee on or before the fifth legislative day of the second-year session.

23. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be laid upon the table and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.

24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Committee on Finance or the Committee on Capital Budget for review. If any such bills have been referred jointly to the Committee on Finance or the Committee on Capital Budget and another standing committee, the Committee on Finance or the Committee on Capital Budget may report separately and a further public hearing may be held at the discretion of the Committee on Finance or the Committee on Capital Budget. All bills appropri-

ating money, which are referred to the Committee on Finance or the Committee on Capital Budget may have only one hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.

25. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.

26. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.

27. The standing committees of the Senate shall be as follows: The Committee on Finance, Committee on Capital Budget, Committee on Ways and Means, Committee on Banks, Committee on Economic Development, Committee on Education, Committee on Executive Departments, Committee on Environment, Committee on Insurance, Committee on Internal Affairs, Committee on Interstate Cooperation, Committee on Judiciary, Committee on Public Institutions, Health and Human Services, Committee on Public Affairs, Committee on Transportation, Committee on Wildlife and Recreation, and the Committees on Rules and Resolutions, Journal, and Enrolled Bills.

28. Messages shall be sent to the House of Representatives by the Clerk of the Senate.

29. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.

30. All questions shall be put by the President, and each member of the Senate shall signify his assent or dissent by answering yea or nay. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.

31. No person except members of the executive, or members of the House of Representatives and its officers, shall be admitted to the floor of the Senate, except by the invitation of the President, or some member with his consent.

32. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.

33. No standing rule of the Senate shall be suspended unless two-thirds of the members present vote in favor thereof. This rule shall not apply to Senate Rule 9.

34. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present vote therefor.

35. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairman to preside in committee.

36. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.

37. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.

38. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.

39. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, redrafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he shall distribute this list to every member of the Senate as soon as it is prepared.

40. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.

41. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.

42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.

43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Nongermane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.

44. PERSONAL PRIVILEGE: A Senator may, as a matter of personal privilege, defend his position on a bill, his integrity, his record, or his conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.

45. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.

46. If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

Adopted.

Senator Disnard offered a floor amendment.

SENATOR DISNARD: Mr. President, on behalf of many Senators in this body, I wish to call the Presidents attention to the dates as presented December 11 and December 21 deadline for draft filing for deadlines to submitting complete information. I would like to suggest, Mr. President, on behalf of many Senators that the date of December 11 be changed to December 18 and the date of December 21 be changed to December 28. I respectfully call the Presidents attention to the fact that those dates are very similar to the dates that we have in our Black Book that we had for the 1991-92 session. The date of the 28th is the same which we had to change, subsequently, so I would hope that the body would approve of this change.

Amend Senate Rule 17-A (a) & (b) & (c) to read as follows:

17- A (a) No request by a member of the Senate for drafting a bill or a joint resolution, other than the general appropriations (budget) bill or the capital budget bill, shall be accepted by Legislative Services for processing unless the subject matter of the legislation has been filed with Legislative Services no later than Friday, December 18, 1992.

(b) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless the complete information necessary for drafting such a bill or joint resolution is submitted to Legislative Services not later than 5:00 p.m. on Monday, December 28, 1992.

(c) Every Senate bill and joint resolution, other than the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 5:00 p.m., on Friday, January 8, 1993.

Floor amendment adopted.

Resolution adopted.

Recess.

Out of recess.

SPEAKER OF THE HOUSE, HAROLD W. BURNS: Thank you very much. It is going to be a pleasure working with you for the coming two years. We have a lot of problems ahead, but we can solve them by working together. The one thing that I would warn you about, you're being lead by an insurance agent as the House is; and whether we are going to sell each other policies when things get slow and out I am not sure. But I can guarantee you that we both will be selling our ideas to you throughout the session. I think that has stood me well in the House and

I am sure that it will with your new Senate President. Again, I look forward to working with you and congratulations to all of the new members.

HOUSE MESSAGE

Mr. President:

The House of Representatives has organized and has elected its officers:

Speaker of the House: Representative Harold W. Burns

Clerk of the House: James A. Chandler

Assistant Clerk of the House: Leo J. Callahan

Sergeant-At-Arms: Warren W. Leary

HOUSE MESSAGE

Mr. President:

The House of Representatives is organized and ready to meet with the honorable Senate in Joint Convention for the purpose of electing a State Treasurer and a Secretary of State.

Senator Colantuono moved that the House be notified that the Senate is ready to meet in Joint Convention.

Adopted.

Recess for Joint Convention.

Out of recess.

RESOLUTION

Senator Fraser offered the following Resolution:

RESOLVED, that the Secretary of State be requested to furnish the Senate with the Official return of votes from the various Senatorial Districts.

Adopted.

First District	
Carole Lamirande, d	10,210
Frederick W. King, r	8,920
Plurality for Lamirande	1,290
Second District	
Wayne D. King, d	11,308
Glenn A. Sharp, r& l	10,487
Plurality for King	821
Third District	
Kenneth J. MacDonald, r	15,341
Lee Webb, d	8,598
Plurality for MacDonald	6,743
Fourth District	
Leo W. Fraser, Jr., r	12,464
John F. Lake, d	5,660
David W. Parker, l	1,861
Plurality for Fraser	4,943

Fifth District	
Ralph Degnan Hough, r	10,977
Anne E. Rowe, d	9,740
Plurality for Hough	1,237
Sixth District	
George a. Lovejoy, r& l	10,840
Charles W. Grassie, Jr., d	8,205
Plurality for Lovejoy	2,635
Seventh District	
David P. Currier, r	10,666
David R. Plourde, d	6,492
Martin Bender, l	962
Plurality for Currier	3,212
Eight District	
George F. Disnard, d& r	17,920
Ninth District	
Sheila Roberge,r	16,861
Richard C. Frank, d	8,254
Plurality for Roberge	8,607
Tenth District	
Clesson J. Blaisdell, d	11,581
Jane P. Lane, r	8,095
Plurality for Blaisdell	3,486
Eleventh District	
David K. Wheeler, r	10,884
Gerald Sherman, d	8,076
Alan Groupe, I	766
Plurality for Wheeler	1,944
Twelfth District	
Barbara J. Baldizar, d	10,884
Thomas P. Stawasz, r	10,316
Plurality for Baldizar	568
Thirteenth District	
Debora B. Pignatelli, d	8,563
Donald C. Davidson, r	7,230
William Zebuhr, l	542
Plurality for Pignatelli	791
Fourteenth District	
Thomas Colantuono, r&d	17,551
Fifteenth District	
Susan McLane, r	12,936
Carol Carstarphen, d	5,902
Paul Siegler, l	2,719
Plurality for McLane	4,315

Sixteenth District

Eleanor P. Podles, r	12,685
Ronald S. Machos, d	8,542
Scott Ives, l	1,029
Plurality for Podles	3,114

Seventeenth District

John S. Barnes, Jr., r&d	15,691
Paul Brown, l	1,972
Plurality for Barnes, Jr.	13,719

Eighteenth District

John A. King, d	10,249
Lawrence Constantine, r	6,084
John Follansbee, l	739
Plurality for King	3,426

Nineteenth District

Richard Russman, r&d	17,681
Paul H. Loffler, l	2,046
Plurality for Russman	15,635

Twentieth District

Ann J. Bourque, d	8,731
Bob Ouellette, r	8,639
Plurality for Bourque	92

Twenty-First District

Jeanne Shaheen, d	12,996
Amos R. Townsend, r	6,338
Plurality for Shaheen	6,658

Twenty-Second District

Joseph L. Delahunty, r	14,209
Pete Murphy, d	7,892
Bob Slein, l	1,145
Plurality for Delahunty	5,172

Twenty-Third District

Beverly A. Hollingworth, d	11,903
Kathleen Kelley Rush, r	11,098
Plurality for Hollingworth	805

Twenty-Four District

Burt Cohen, d	12,052
W. Douglas Scamman, Jr., r	11,169
Plurality for Cohen	883

RESOLUTION

Senator Delahunty offered the following Resolution:

RESOLVED, that the returns from the several Senatorial Districts be referred to a select committee of three with instruction to examine and count the same and report to the Senate where any vacancies or contest exists, and if so, in what Senatorial District.

Adopted.

The Chair appointed Senators: Pignatelli, Wheeler and Bourque to examine the vote totals.

Recess.

Out of recess.

COMMITTEE REPORT

The select committee to whom was referred the various return of votes for state Senators from the several districts, having attended to their duties and having examined the returns made to the Secretary of State and the records in the Office of said Secretary, report that they find the state of the vote returned from the several districts to be correct.

Adopted.

ANNOUNCEMENTS
RESOLUTION

Senator Podles moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we recess we recess until 1:00 p.m., January 6, 1993.

Adopted.

LATE SESSION
RESOLUTION

Senator McLane moved that the Senate be in recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, printing legislation and scheduling hearings.

Adopted.

Recess.

Out of Recess.

LATE SESSION

Senator Hollingworth moved to adjourn.

Adopted.

Adjournment.

January 6, 1993

CONVENING DAY

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones.

The act of your convening is, in and of itself, an interesting, but basically irrelevant exercise, until it becomes clear what this convening of yours is designed to accomplish. As long as compassion and morality and

courage drive you as much as politics do, then the things you accomplish for us will make you convening in this old room worthwhile beyond words. May it be so all through this session. So, let us pray: Here they are, O Lord, all convened and ready to go. By the gracious and gentle working of your mighty power may the fact that these Senators are gathered and about to commence their work be good news and not bad news for us who have chosen them.

Amen

Senator Fraser led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

SENATOR MCLANE (In the Chair): I would recognize Senator Hough, Governor Hough. He will introduce the staff.

The Senate President, Senator Ralph Degnan Hough, introduced Senate Staff.

Debora McLeod - Executive Assistant to the Senate President.
Donna Morin - Administrator to the Senate President.
Arlene Burns - Chief Administrative Officer.
Doreen Sumner - Receptionist.
Wilma Gouger - Executive Secretary/Administrator.
Andy Boyle - Legislative Assistant.
Brenda Mento - Journal Clerk.
Tammy Wright - Calendar Clerk.
Henry Wilson - Senate Recorder.
Pat Waldvogel - Administrative Assistant to Finance/Capital Budget and Ways and Means.
David Harrington - Information Officer.
Michael Kitch - Committee Research Assistant.
Rachel Duvernay - Executive Secretary/Administrator.
Steve Maviglio - Legislative Assistant.
Curtis Barry - Legislative Aide.
Carol Pletcher - Supervisor, Committee Secretaries.
Woody Ellen Alosa - Committee Secretary.
Rachel Berger - Committee Secretary.
Diane Fenton - Committee Secretary.
Jeanne Geiman - Committee Secretary.
Rosalie Brooks-Patch - Committee Secretary.
Terri Pennock - Committee Secretary.
Kathe Lewis - Correspondence Secretary.
June Goulson - Director, Senate Research.
Susan Faretra - Research Assistant/Secretary.

SENATOR HOUGH: Welcome. We appreciate the work that you members that have been with us before have done in the past and we look forward to your continued work along with the new members. Thank you.

Senator Delahunty offered the following resolution:

SENATE RESOLUTION

Salary and Mileage Payments to the Members of the Senate

RESOLVED, that the salary of the members of the Senate be paid in one undivided sum as early as practical after adoption of this Resolution, and be it further

Resolved, that mileage of members of the Senate be paid every two weeks during the session.

Adopted.

RESOLUTION

SENATOR RUSSMAN: Statutorily on a number of places that it talks in terms of majority and minority leader that requires those people to actually do certain things. In order to make it jibe, we either have to change all of the statutes, which would be rather unnecessary, hopefully, and expensive. This way here, we can do it by resolution that is: 'they' would mean the same thing, and that way it would take care of the statutory obligation and the rule changes and that type of thing.

Senator Russman offered the following resolution:

SR 2

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

clarifying the meaning of the terms "Republican leader" and "Democratic leader" for purposes of statutory and rules construction.

Whereas, the New Hampshire senate will be operating under a new leadership structure for the 1993-94 legislative session; and

Whereas, this has resulted in a need to clarify the meaning of the terms "Republican leader" and "Democratic leader," now, therefore, be it

Resolved by the Senate:

That for the purposes of statutory references and interpretation, appointments to senate committees, and the senate rules, senate "majority leader" shall be deemed to mean the "Republican leader" and senate "minority leader" shall be deemed to mean the "Democratic leader."

Adopted unanimously.

RESOLUTION

Senator Russman offered the following resolution:

RESOLUTION

Whereas the Senate Rules Committee met on Monday, December 28, 1992 and at that time voted to extend the deadline to December 30, 1992 as the final day to submit complete legislative information for draft request to The Office of Legislative Services.

Be it resolved by this resolution that the action taken by the Senate Rules Committee is ratified and approved by the Senate.

Adopted.

RESOLUTION

SENATOR RUSSMAN: What you have before you is the list of the present rules and the new proposed rules. Basically what this is attempting to do and should do upon completion, is to essentially recognize what we have been doing for the past couple of months; and that is to talk about the divisional aspects of the Senate in terms of having the five different divisions, Senate Administration and the Leadership conference. It amends it to make sure that what we have actually been doing, and we ratify that so that we could carry on in the same methodology that we have been using in the last couple of months.

Senator Russman offered the following resolution.

Be it resolved that the 1993 Senate Rules be amended with the following amendments and adopted by a majority vote.

NEW RULE PROPOSAL 1993

17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.

17- A (a) No request by a member of the Senate for drafting a bill or a joint resolution, other than the general appropriations (budget) bill or the capital budget bill, shall be accepted by Legislative Services for processing unless the subject matter of the legislation has been filed with Legislative Services no later than **Friday December 18, 1992.**

(b) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless the complete information necessary for drafting such a bill or joint resolution is submitted to Legislative Services not later than 5:00 p.m. on **Wednesday, December 30, 1992.**

(c) Every Senate bill and joint resolution, other than the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 5:00 p.m., on.

(d) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, **shall be committed to the Finance Division for review**. If any such bills have been referred jointly to the Committee on Finance or the Committee on Capital Budget and another standing committee, the Committee on Finance or the Committee on Capital Budget may report separately and a further public hearing may be held at the discretion of the Committee on Finance or the Committee on Capital Budget. All bills appropriating money, which are referred to the Committee on Finance or the Committee on Capital Budget may have only one hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.

27. **The committees of the Senate shall be divided by 5 divisions. The Finance Division shall include The Finance** Executive Committee, The Committee on Capital Budget, The Committee on Ways

and Means, The Committee on Appropriations. The Economic Resource Division shall include The Committee on Economic Development, The Committee on Banks, The Committee on Insurance, The Committee on Transportation. The Environmental Resources Division shall include The Committee on Environment, The Committee on Wildlife. The Government Operations Division shall include The Committee on Executive Departments and Administration, The Committee on Interstate Cooperation, The Committee on Judiciary, The Committee on Public Affairs, Senate Administration,(including the Committees on Rules and Resolutions, Journal, and Enrolled Bills). The Human Resources Division shall include The Committee on Public Institutions, Health and Human Services, and The Committee on Education.

Adopted by the necessary 2/3 vote.

Recess.

Out of recess.

HOUSE MESSAGE

The House is ready to meet in Joint Convention for the purpose of canvasing the votes for the Governor and Executive Council.

RESOLUTION

Senator Podles resolved to meet in Joint Convention for the purpose of canvasing the votes for Governor and Executive Council.

Adopted.

In recess for Joint Convention.

Out of recess.

ANNOUNCEMENTS

RESOLUTION

Senator Fraser moved that it being resolved that the business of the day being completed that the Senate now adjourn until Thursday, January 7, 1993 at 11:00 a.m.

Adopted.

LATE SESSION

RESOLUTION

Senator Fraser moved that we adjourn until Thursday, January 7, 1993 at 11:00 a.m.

Adopted.

Adjournment.

January 7, 1993

INAUGURATION DAY

The Senate met at 11:00 a.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones.

There once was a Senate of granite, which the Union Leader thought was from another planet. They picked a leader named Hough, A choice Joe Delahunty found tough, and even Steve Merrill, he panned it. But Ralph smiled and nodded and through it all plodded, and said to all who came

near, "you have nothing to fear", "with you, them and him I'm committed to work, even in the times when you think I'm a - little bit off base". So the giant from Lebanon took to the floor and gently reminded the great twenty four: Hold off those screams, those yells and those hollers, just what did you expect for one hundred dollars?

All through this session, do not forget to laugh among and at yourselves. It will help keep the very important decisions you will be called upon to make in their proper perspective.

Let us Pray: Great God of laughter, leadership, hilarity and holiness, bless this day and these good women and men and endow them with the imprint of your character. Amen

Senator Disnard led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

RULES OF THE SENATE

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same biennium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll-Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.

17-A (a) Bills, deadlines for drafting.

17-b Bills, deadlines for information.

17-c Final deadline.

18. Resolutions to be treated as bills.
19. Bills shall have three reading; progress of; time for second and third readings.
20. Bills, printing and distribution.
21. Bills amended only on second reading; filing of amendments.
22. Public hearings to be held and advertised.
23. Amended bills, printed distributed and disposed of.
24. Appropriating money, to whom referred.
25. President to sign bills, etc.
26. Committees, appointment of.
27. Standing Committees.
28. Messages sent to House.
29. Messages, when received.
30. Voting; division of Senate.
31. Visitors to Senate.
32. Hours of meeting.
33. Rules of Senate, how suspended.
34. Rules of Senate, how rescinded.
35. Committee of the whole.

36. President may name member to chair.
37. Senate staff; composition and duties.
38. Senate staff; days of employment.
39. Committees, reports and meetings.
40. Appeal, presiding officer ruling.
41. Motions, no substitution under color of amendment.
42. Conflict of interest.
43. Committee of Conference reports.
44. Personal privilege.
45. Requisition Approval Required.
46. Fiscal notes, requirements.

SENATE RULES

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected one week after the permanent journal copy is placed in the hands of the Senate.
2. No member shall hold conversation with another while a member is speaking in debate.
3. Every member, wishing to speak, shall address the President and when he has finished shall, if having risen to speak, then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate.
5. More than one member rising to speak at the same time, the President shall decide who shall speak first.
6. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order; in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.
9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment to the general appropriations (budget) bill. No motion to suspend this rule shall be permitted.
10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.

11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.

12. When the nays and yeas have been moved by a member and duly seconded by another member, each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.

13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.

14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side, nor unless the notice of such motion be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or on the next day on which the Senate shall be in session within one half hour after the convening of the early session, and any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.

14 (a) Reconsideration of any bills subject to a transfer date established by joint rules must be acted on or before the joint rule deadline, and thereafter shall be null and void.

15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.

16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.

17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the

sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.

17- A (a) No request by a member of the Senate for drafting a bill or a joint resolution, other than the general appropriations (budget) bill or the capital budget bill, shall be accepted by Legislative Services for processing unless the subject matter of the legislation has been filed with Legislative Services no later than Friday December 18, 1992.

(b) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless the complete information necessary for drafting such a bill or joint resolution is submitted to Legislative Services not later than 5:00 p.m. on Wednesday, December 30, 1992.

(c) Every Senate bill and joint resolution, other than the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 5:00 p.m., on Monday, January 11, 1993.

(d) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of theSenate Rules Committee or a two-thirds vote on the floor.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.

19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 20, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.

20. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.

21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents thereon. No amendment to any bill shall be proposed or allowed at any time or by

any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.

22. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 5 days before hearing in the Senate Calendar.

(a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, re-refer to committee, inexpedient to legislate, or refer for interim study. Re-refer to committee shall be a committee report only in the first-year session; refer for interim study shall be a committee report only in the second year.

(b) If a bill is reported re-refer to committee, it shall read re-refer to committee for action in the second-year session. Bills which have been re-referred to the committee on Finance shall be referred by Finance to the original committee to which it was assigned when the senate adjourned from the first session. All re-referred bills shall be reported by the committee on or before the fifth legislative day of the second-year session.

23. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be laid upon the table and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.

24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Finance Division for review. If any such bills have been referred jointly to the Committee on Finance or the Committee on Capital Budget and another standing committee, the Committee on Finance or the Committee on Capital Budget may report separately and a further public hearing may be held at the discretion of the Committee on Finance or the Committee on Capital Budget. All bills appropriating money, which are referred to the Committee on Finance or the Committee on Capital Budget may have only one hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.

25. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.

26. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.

27. The committees of the Senate shall be divided by 5 divisions. The Finance Division shall include The Finance Executive Committee, The Committee on Capital Budget, The Committee on Ways and Means, The Committee on Appropriations. The Economic Resource Division shall include The Committee on Economic Development, The Committee on Banks, The Committee on Insurance, The Committee on Transportation. The Environmental Resources Division shall include The Committee on Environment, The Committee on Wildlife. The Government Operations Division shall include The Committee on Executive Departments and Administration, The Committee on Interstate Cooperation, The Committee on Judiciary, The Committee on Public Affairs, Senate Administration,(including the Committees on Rules and Resolutions, Journal, and Enrolled Bills). The Human Resources Division shall include The Committee on Public Institutions, Health and Human Services, and The Committee on Education.
28. Messages shall be sent to the House of Representatives by the Clerk of the Senate.
29. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.
30. All questions shall be put by the President, and each member of the Senate shall signify his assent or dissent by answering yea or nay. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.
31. No person except members of the executive, or members of the House of Representatives and its officers, shall be admitted to the floor of the Senate, except by the invitation of the President, or some member with his consent.
32. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.
33. No standing rule of the Senate shall be suspended unless two-thirds of the members present vote in favor thereof. This rule shall not apply to Senate Rule 9.
34. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present vote therefor.
35. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairman to preside in committee.
36. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.
37. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a door-keeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.

38. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.
39. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, redrafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he shall distribute this list to every member of the Senate as soon as it is prepared.
40. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.
41. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.
42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.
43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Nongermane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.
44. PERSONAL PRIVILEGE: A Senator may, as a matter of personal privilege, defend his position on a bill, his integrity, his record, or his conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.
45. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.
46. If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

INTRODUCTION OF SENATE BILLS

Senator Delahunty offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered SB 11 - 15 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

SB 11 0111B 93-0168
allowing 15-year-old persons to bus tables in dining rooms and lounges. (Disnard of Dist 8; Behrens of Sull 2 - To Ways and Means)

SB 12-FN 0112B 93-0169
creating a new category of liquor license to allow a warehouser to receive, warehouse and ship liquor, wine or beverages or any combination of liquor, wine and beverages, and adding a new fee for certain wine and liquor vendors. (Disnard of Dist 8; Behrens of Sull 2 - To Ways and Means)

SB 13 0099B 93-0154
extending the reporting date of the committee studying the effects of substance abuse on health care and economic costs to the state. (Hollingworth of Dist 23; Amidon of Hills 9 - To Public Institutions, Health and Human Services)

SB 14 0109B 93-0167
relative to package deals sponsored by liquor licensees. (Disnard of Dist 8; Behrens of Sull 2 - To Ways and Means)

SB 15-FN-A 0181B 93-0170
to fund a new position and administrative costs for the board of examiners of psychology and mental health practice and making an appropriation therefor. (Fraser of Dist 4 - To Executive Departments and Administrations)

HOUSE MESSAGE

The House of Representatives is ready to meet with the Honorable Senate in Joint Convention for the purpose of attending to the Inauguration of the Governor, Stephen E. Merrill, for the purpose of hearing the report of the Joint Comittee appointed to compare and count the votes for Governor and Executive Council and taking the oath of the Governor and the Executive Council.

RESOLUTION

Senator Disnard moved that it be RESOLVED, to meet with the House of Representatives in Joint Convention for the purpose of hearing the report of the Joint Committee appointed to compare and count the votes for Governor and Councilors and for the Inauguration of the Governor elect, the Honorable Stephen E. Merrill.

Adopted.

In recess for Joint Convention.

Out of recess.

ANNOUNCEMENTS

SENATOR BALDIZAR (Rule #44): I don't know how everyone else would feel about this, but during the inaugural address and during the whole presentation and the prayer portion, I was right in front as we all were,

and I was kind of upset with some of the media, who at the point of prayer, whatever someones religious affiliation is, I think that we should respect the prayer time. I was kind of upset that the camera, there was a woman standing there taking picture after picture after picture and it was hard to concentrate. I personally feel, that there was far too many prayers said at this address, there were a lot more prayers than normal, but I feel that it is kind of offensive to have the press be permitted to take pictures. I realize that is the House Chamber and it is not our Chamber, but I just wonder if there is some way that we could address that or send a message, that I think that it is inappropriate for them to be able to take pictures during prayer. I don't know how the rest of the Senators feel about it.

RESOLUTION

Senator Roberge moved that the Senate be in recess to the Call of the Chair, that we recess for the sole purpose of introducing legislation, referring bills to committee, printing legislation and scheduling hearings.

Adopted.

RESOLUTION

Senator Fraser moved that the business of the day being completed, that the Senate recess to the Call of the Chair.

Adopted.

Recess to the Call of the Chair.

Out of Recess.

INTRODUCTION OF SENATE BILLS

Senator Delahunty offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered 1 - SCR 2 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

SB 1 0141B 93-0159
regulating the possession and sale of oleoresin capsicum self-protection products. (Cohen of Dist 24 - To Judiciary)

SB 2-FN 0829B 93-0298
redesignating a portion of New Hampshire Route 51 as New Hampshire Route 101. (Cohen of Dist. 24; Woods of Rock 25; Gargiulo of Rock 25; Rubin of Rock 25; D. Richards of Rock 23 - To Transportation)

SB 3 0302B 93-0309
permitting law enforcement officers who are attorneys to appear in court for parties in civil proceedings. (Russman of Dist 19; Conroy of Rock 13; Battles of Rock 18; P. Katsakiores of Rock 13 - To Judiciary)

SB 4 0089B 93-0932
relative to a capital appropriation for state house repairs. (Blaisdell of Dist 10; LaMott of Graf 5 - To Capital Budget)

SB 5 1007B 93-0826
repealing article 6 of the uniform commercial code on bulk sales and making conforming amendments. (McLane of Dist 15 - To Banks)

SB 6 0607B 93-0285
permitting the bank commissioner to regulate the Claremont Industrial Development Authority as a small business lender under any loan funded through the New Hampshire business finance authority or the Small Business Administration. (Disnard of Dist 8 - To Banks)

SB 7 0960B 93-0630
changing the bonding requirement for mortgage brokers. (Disnard of Dist 8 - To Banks)

SB 8-FN 0864B 93-0728
offering every high school valedictorian in the state free tuition at state college grade institutions. (Fraser of Dist 4 - To Education)

SB 9 1063B 93-0824
adopting the uniform commercial code Article 2A on leases and conforming amendments to Articles 1 and 9. (McLane of Dist 15 - To Banks)

SB 10 1047B 93-0825
revising Article 3 and Article 4 of the uniform commercial code. (McLane of Dist 15 - To Banks)

SB 16 0844B 93-0240
relative to the composition of the wetlands board. (Fraser of Dist 4 - To Environment)

SB 17-FN-A 0854B 93-0726
establishing a committee to study methods of preventing and resolving disputes relative to educationally disabled students and making an appropriation therefor. (Disnard of Dist 8; Carter of Merr 7 - To Education)

SB 18 0891B 93-0729
increasing the amount of damage required to necessitate reporting a boating accident. (Fraser of Dist 4 - To Insurance)

SB 19 0873B 93-0753
establishing a right to work act which provides for freedom of choice on whether to join a labor organization. (Barnes of Dist 17 - To Public Affairs)

SB 20 0841B 93-0930
relative to representation of business organizations in small claims court. (Fraser of Dist 4 - To Judiciary)

SB 21 0872B 93-0969
permitting records to be copied, reproduced and stored on electronic, magnetic, video, digital or optical imaging media and allowing the reproduction of such records to be admissible in evidence. (Fraser of Dist 4 - To Judiciary)

SB 22 0886B 93-0978
relative to foreclosure notification waiver. (Fraser of Dist 4 - To Banks)

SB 23 0944B 93-0984
increasing the maximum amount in controversy for a small claims action. (Fraser of Dist 4 - To Judiciary)

SB 24 0933B 93-0988
relative to record retention by insurers. (Fraser of Dist 4 - To Insurance)

SB 25 0923B 93-0990
relative to charitable life gifts and life insurance contracts. (Fraser of Dist 4 - To Insurance)

SB 26 0883B 93-0991
relative to a waiting period before a public adjuster may approach a potential client. (Fraser of Dist 4 - To Judiciary)

SB 27 0909B 93-1009
establishing a committee to study the apportionment of county taxes. (Barnes of Dist 17; Salatiello of Belk 2 - To Public Affairs)

SB 28 0920B 93-1010
establishing a committee to study the problem of conflict of interest regarding town officials. (Barnes of Dist 17; Salatiello of Belk 2 - To Public Affairs)

SB 29-FN-A 0084B 93-0143
making an appropriation to the department of postsecondary technical education to support a pilot satellite program in Haverhill to promote north country economic development. (W. King of Dist 2; Hough of Dist 5; Blaisdell of Dist 10; Disnard of Dist 8; Teschner of Graf 5; LaMott of Graf 5; D. Cote of Hills 29; Skinner of Rock 27; Trelfa of Graf 2 - To Economic Development)

SB 30-FN-A 0543B 93-0627
making appropriations for meals on wheels and other programs in the division of elderly and adult services. (Disnard of Dist 8; MacDonald of Dist 3; J. King of Dist 18; Shaheen of Dist 21; Lamirande of Dist 1; Salatiello of Belk 2; LaMott of Graf 5; Nardi of Hills 39; DePecol of Ches 14; Sargent of Hills 3 - To Appropriations)

SB 31 0906B 93-0734
repealing sections referring to the loyalty oath requirement which was repealed last year. (Disnard of Dist 8; J. White of Hills 46; Champagne of Ches 19; W. Riley of Ches 7; Yeaton of Merr 10 - To Education)

SB 32-FN 0846B 93-0698
relative to certified pharmacy technicians. (Barnes of Dist 17; D. Sytek of Rock 26 - To Executive Departments and Administration)

SB 33 0853B 93-0716
relative to licensing of certified public accountants. (Wheeler of Dist 11; Moncrief of Hills 13 - To Executive Departments and Administration)

SB 34-FN-LOCAL 0878B 93-0732
including traumatic brain injury and autism in the definition of "educationally disabled child." (Disnard of Dist 8; W. Riley of Ches 7; Carter of Merr 7; Durham of Hills 22; Tate of Hills 23 - To Education)

SB 35-FN-A 0849B 93-0929
relative to a fund for organ transplantation and transferring responsibility from vocational rehabilitation to the division of human services and making an appropriation therefor. (McLane of Dist 15; J. King of Dist 18 - To Public Institutions, Health and Human Services)

SB 36-FN-A 0636B 93-0415
establishing a customized training program for economic growth and making an appropriation therefor. (Blaisdell of Dist 10; Disnard of Dist 8; Hough of Dist 5; Cohen of Dist 24 - To Economic Development)

SB 37 0850B 93-0699
adding and redefining terms relative to the New Hampshire pharmacy board. (Barnes of Dist 17; D. Sytek of Rock 26 - To Executive Departments and Administration)

SB 38 0911B 93-0737
protecting against unauthorized access to teacher certification records. (Hollingworth of Dist 23; Fraser of Dist 4; Champagne of Ches 19; Yeaton of Merr 10; J. White of Hills 46 - To Education)

SB 39 0138B 93-0186
making a technical correction in the enhanced 911 system law. (Currier of Dist 7; J. King of Dist 18; Rodeschin of Sull 4; Cowenhoven of Hills 14 - To Executive Departments and Administration)

SB 40 0354B 93-0244
requiring the public utilities commission to disapprove of a portion of any rate related to certain advertising expenses. (Barnes of Dist 17; Leonard Smith of Hills 25; Calawa of Hills 17; Boucher of Rock 29; Fenton of Hills 24 - To Executive Departments and Administration)

SB 41 0901B 93-0543
permitting selectmen to accept dedicated streets which have been approved by the planning board. (Barnes of Dist 17; Weyler of Rock 18 - To Public Affairs)

SB 42 0845B 93-0624
revising the committee studying a statewide trauma care system and extending the completion date for the committee's work. (Currier of Dist 7; Cowenhoven of Hills 14 - To Executive Departments and Administration)

SB 43 0815B 93-0663
relative to the state board of auctioneers. (Currier of Dist 7; Sallada of Hills 4 - To Executive Departments and Administration)

SB 44 0842B 93-0749
adding to the membership of the emergency shelter commission. (McLane of Dist 15; Podles of Dist 16 - To Public Institutions, Health and Human Services)

SB 45 0826B 93-0780
entitling bargaining representatives certified under the public employee labor relations act to a service fee. (McLane of Dist 15; Lamirande of Dist 1 - To Insurance)

SB 46 0874B 93-0936
relative to involuntary transfer or discharge of patients in health care facilities. (McLane of Dist 15 - To Public Institutions, Health and Human Services)

SB 47 0925B 93-0937
relative to prosecuting petitions under the uniform reciprocal enforcement of support act. (McLane of Dist 15 - To Public Institutions, Health and Human Services)

SB 48 0217B 93-0084
relative to the children's trust fund. (Podles of Dist. 16; Cohen of Dist 24; Nordgren of Graf 10; Bean of Graf 14; M. Hill of Merr 16 - To Judiciary)

SB 49 0926B 93-0956
establishing a committee to study the feasibility of establishing a commercial shellfish and oyster aquaculture program. (Cohen of Dist 24; Hollingworth of Dist 23; O'Keefe of Rock 21 - To Environment)

SB 50 0869B 93-0940
extending the report date and adding additional members to the law enforcement and prosecutor task force. (Hollingworth of Dist 23; Fraser of Dist 4; Podles of Dist 16; Record of Hills 27; Ziegra of Belk 5 - To Judiciary)

SB 51 1022B 93-1021
relative to the authority of land surveyors to enter upon land. (Currier of Dist 7 - To Executive Departments and Administration)

SB 52 0915B 93-0993
relative to workers' compensation liability insurance, return of insurance premiums, and unfair insurance trade practices. (Fraser of Dist 4 - To Insurance)

SB 53 0956B 93-0994
relative to third party administrators. (Fraser of Dist 4 - To Insurance)

SB 54 1030B 93-0985
relative to workers' compensation insurance rates. (Fraser of Dist 4 - To Insurance)

SB 55 0924B 93-0989
relative to accident and health insurance and health maintenance organizations. (Fraser of Dist 4 - To Insurance)

SB 56 0922B 93-0992
relative to coverage for intra-family or inter-spousal claims under liability insurance policies. (Fraser of Dist 4 - To Insurance)

SB 57 1025B 93-0797
relative to accreditation under the insurance laws. (Fraser of Dist 4 - To Insurance)

SB 58 1003B 93-0704
allowing multiple employers to consolidate employment and wage information for purposes of unemployment compensation contributions. (Fraser of Dist 4 - To Insurance)

SB 59 0988B 93-0833
relative to the privacy act. (Podles of Dist 16; Cohen of Dist 24; Whalley of Merr 5 - To Judiciary)

SB 60 1032B 93-0659
relative to solicitation of prostitutes. (Bourque of Dist 20; J. King of Dist 18; Nardi of Hills 39 - To Judiciary)

SB 61 0410B 93-0289
relative to substitution of alternate jurors after final submission of a case to the jury. (Pignatelli of Dist 13 - To Judiciary)

SB 62 0816B 93-0081
relative to failure to support a child, spouse or other dependent. (Podles of Dist 16; Nordgren of Graf 10 - To Judiciary)

SB 63 1051B 93-0164
relative to impoundment of motor vehicles in which an act of prostitution has occurred. (Bourque of Dist 20; Nardi of Hills 39 - To Judiciary)

SB 64 1077B 93-0961
extending the reporting date of the committee to study head injury cases. (McLane of Dist 15 - To Public Institutions, Health and Human Services)

SB 65 1040B 93-0910
requiring health care providers to disclose an ownership interest in any entity to which they refer patients. (Colantuono of Dist 14; Hollingworth of Dist 23; Holmes of Merr 14; Lindblade of Sull 7 - To Public Institutions, Health and Human Services)

SB 66 0861B 93-0727
prohibiting the distribution of all forms of birth control to minors in public schools without parental consent. (Wheeler of Dist 11; Lovejoy of Dist 6; Kennedy of Merr 7; Moncrief of Hills 13; Holley of Hills 28; Arndt of Rock 27 - To Public Affairs)

SB 67 0974B 93-0083
relative to wage assignment for child support. (Podles of Dist 16; Nordgren of Graf 10; Bean of Graf 14 - To Judiciary)

SB 68 1062B 93-1004
to protect the Nansen ski jump facility as an historic property or resource. (Lamirande of Dist 1; Blaisdell of Dist 10; M. Hawkinson of Coos 7 - To Economic Development)

SB 69-FN 0314B 93-0236
allowing the liquor commission to grant cocktail lounge licenses to certain ballrooms which do not have a seating capacity for 500. (Currier of Dist 7; D. Young of Ches 2 - To Ways and Means)

SB 70 0866B 93-0982
requiring that dogs and cats placed by shelters and pounds be spayed or neutered. (Shaheen of Dist 21; Record of Hills 27 - To Wildlife & Recreation)

SB 71 0938B 93-0974
establishing a committee to study regional planning and economic development. (Cohen of Dist 24; W. King of Dist 2; Buckley of Hills 44; Weeks of Merr 24; Simon of Rock 17 - To Economic Development)

SB 72 0881B 93-0973
relative to central business service districts. (Cohen of Dist 24; McLane of Dist 15 - To Executive Departments and Administration)

SB 73-FN-A 0554B 93-0720
making an appropriation to promote international tourism. (Cohen of Dist 24; Baldizar of Dist. 12; Avery of Ches 8; Haettenschwiller of Hills 29 - To Economic Development)

SB 74 0825B 93-0801
changing the name of Civil Rights Day to Martin Luther King, Jr. Civil Rights Day. (McLane of Dist 15; Cohen of Dist 24; J. King of Dist 18; Hough of Dist 5; W. King of Dist 2; D. Pignatelli of Dist. 21; Splaine of Rock 36; Battles of Rock 18; Bell of Rock 33; D. Cote of Hills 29; L. Johnson of Hills 40 - To Public Affairs)

SB 75 0625B 93-0741
allowing a property tax exemption for solar-powered electricity. (Disnard of Dist 8; Burling of Sull 1 - To Environment)

SB 76 0882B 93-0752
establishing the right of a New Hampshire manufacturer to be indemnified by the purchaser or lessee of a New Hampshire product for injury or damage caused by such product. (Russman of Dist 19; Shaheen of Dist 21; Battles of Rock 18; Miller of Rock 13; Lee of Rock 13; P. Katsakiores of Rock 13; G. Katsakiores of Rock 13 - To Insurance)

SB 77 0843B 93-0722
relative to resellers of telecommunication services. (Cohen of Dist 24; W. King of Dist 2; MacDonald of Dist 3; Russman of Dist 19; Hollingworth of Dist 23; Larson of Graf 8; Trombley of Merr 4; Newman of Rock 4; Linda Smith of Belk 5; B. Packard of Hills 19 - To Executive Departments and Administration)

SB 78 0910B 93-0735
requiring that student records of transferring students be provided upon request. (Disnard of Dist 8; W. Riley of Ches 7 - To Education)

SB 79 0899B 93-0811
also known as the "Kimberly Goss Act", limiting persons arrested for a violent offense while on parole or probation for a similar offense from receiving bail. (Colantuono of Dist 14; Hollingworth of Dist 23; Podles of Dist 16; E. Moore of Hills 6; Burling of Sull 1; W. Johnson of Merr 7 - To Judiciary)

SB 80 1083B 93-0935
restricting the use of motorized craft on Goose Pond in Keene. (Blaisdell of Dist 10 - To Transportation)

SB 81 1006B 93-0679
creating a task force to coordinate resources addressing sexual assault and sexual harassment at postsecondary institutions. (Shaheen of Dist 21; W. King of Dist 2; Blaisdell of Dist 10; Record of Hills 27; McIlwaine of Graf 3; K. Wheeler of Straf 8; Loder of Straf 8; A. Merrill of Straf 8 - To Judiciary)

SB 82 1043B 93-0408
returning certain state-owned land to the town of Belmont. (W. King of Dist 2; Salatiello of Belk 2; R. Hawkins of Belk 3; T. Cain of Belk 3 - To Public Affairs)

SB 83 0979B 93-0941
requiring towns to grant a $1,400 property tax credit to persons with certain disabilities or their surviving spouses. (Disnard of Dist 8 - To Public Affairs)

SB 84 0989B 93-0951
relative to the disposition of land use fees by municipalities. (Lovejoy of Dist 6 - To Public Affairs)

SB 85 1045B 93-1005
relative to the composition of the wetlands board. (Lamirande of Dist 1 - To Environment)

SB 86-FN-A 0968B 93-1041
requiring a performance audit of the department of resources and economic development and of the office of state planning and making an appropriation therefor. (W. King of Dist 2; Fraser of Dist 4; Barnes of Dist 17 - To Economic Development)

SB 87 0992B 93-1000
relative to capital investment. (W. King of Dist 2; Hough of Dist 5; Fraser of Dist 4; Delahunty of Dist 22; B. Packard of Hills 19; Crory of Graf 10; Burling of Sull 1; Teschner of Graf 5 - To Economic Development)

SB 88 1013B 93-1033
relative to bonding for economic development projects. (Shaheen of Dist 21; Cohen of Dist 24 - To Economic Development)

SB 89 0983B 93-0998
relative to infrastructure. (W. King of Dist 2; Fraser of Dist 4; Hough of Dist 5; Shaheen of Dist 21; MacDonald of Dist 3; Schotanus of Sull 3; LaMott of Graf 5; Vaughn of Rock 35; Buckley of Hills 44; G. Chandler of Carr 1 - To Economic Development)

SB 90 0940B 93-0082
relative to child support enforcement and child support payments. (Podles of Dist 16; Nordgren of Graf 10; Bean of Graf 14 - To Public Institutions, Health and Human Services)

SB 91 0840B 93-0938
limiting the liability of physicians who volunteer their services at athletic events. (McLane of Dist 15 - To Judiciary)

SB 92-FN 0905B 93-0933
to rename the school for lifelong learning of the university system of New Hampshire, the college for lifelong learning of the university system of New Hampshire. (Lamirande of Dist 1; Hough of Dist 5 - To Education)

SB 93-FN-A 0868B 93-0731
relative to the National Science Foundation's statewide systemic initiatives program and making an appropriation therefor. (Hough of Dist 5; McLane of Dist 15; Disnard of Dist 8; Carter of Merr 7; Yeaton of Merr 10; Larson of Graf 8; Skinner of Rock 27 - To Education)

SB 94 0980B 93-0999
relative to workforce development. (W. King of Dist. 2; Hough of Dist 5; Fraser of Dist 4; Disnard of Dist. 8; Shaheen of Dist 21; Larson of Graf 8; Teague of Merr 20; J. Kane of Sull 01; Bell of Rock 33; R. Hawkins of Belk 3 - To Education)

SB 95 0946B 93-0012
revising, conditioning, or repealing the rulemaking authority of the state board of education. (Hollingworth of Dist 23; W. King of Dist 2; Disnard of Dist 8; Guest of Graf 10 - To Education)

SB 96 0877B 93-0868
making the State Credit Union Act conform with the Federal Credit Union Act. (Fraser of Dist 4; B. Packard of Hills 19; M. Hill of Merr 16 - To Banks)

SB 97 0996B 93-0714
establishing a committee to study parking at Hampton beach state park. (Hollingworth of Dist 23 - To Transportation)

SB 98 1012B 93-1051
relative to fees charged for processing and approval of residential mortgage loan applications. (W. King of Dist 2; Fraser of Dist 4; Cohen of Dist 24; J. King of Dist 18 - To Banks)

SB 99 0954B 93-0955
relative to private charitable trust funds. (Podles of Dist 16; Gross of Merr 18 - To Banks)

SB 100 0887B 93-0934
protecting organizations or projects involving animals. (Hough of Dist 5; Barnes of Dist 17; Shaheen of Dist 21; M. Campbell of Rock 26 - To Wildlife & Recreation)

SB 101-LOCAL 0930B 93-0976
allowing local governments to share tax revenues arising from economic development. (Cohen of Dist 24; Salatiello of Belk 2; O'Rourke of Hills 39 - To Ways and Means)

SB 102 0917B 93-0687
establishing a committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on the state and to study certain incentives and propose a state policy regarding the use of alternative transportation fuel vehicles. (Hollingworth of Dist 23; Russman of Dist 19; Fraser of Dist 4; Bourque of Dist 20 - To Transportation)

SB 103 0958B 93-0949
relative to the construction of exit 10 on the Spaulding turnpike. (Lovejoy of Dist 6 - To Transportation)

SB 104 0955B 93-1014
relative to the repair period allowed under the "lemon law." (Fraser of Dist 4; B. Packard of Hills 19 - To Transportation)

SB 105 0937B 93-0702
relative to the rulemaking authority of commissioners of state departments. (Hollingworth of Dist 23 - To Executive Departments and Administration)

SB 106 0984B 93-0946
relative to a northeast interstate dairy compact. (Disnard of Dist 8 - To Interstate Cooperation)

SB 107 0969B 93-0681
excluding services performed by real estate appraisers from the definition of "employment" for purposes of the unemployment compensation law. (Shaheen of Dist 21; Blaisdell of Dist 10; Hollingworth of Dist 23; R. Hawkins of Belk 3 - To Insurance)

SB 108 0855B 93-0803
relative to uninsured and underinsured motorist coverage. (W. King of Dist 2; Baldizar of Dist 12 - To Insurance)

SB 109 0918B 93-0939
relative to automobile liability insurance and tort liability for certain motor vehicle operations. (Hollingworth of Dist 23; Baldizar of Dist 12; D. Soucy of Hills 42 - To Insurance)

SB 110 0012B 93-0070
establishing the crime of stalking. (Russman of Dist 19; Pignatelli of Dist 13; Senter of Rock 16; J. Flanders of Rock 18; Battles of Rock 18 - To Judiciary)

SB 111 0834B 93-0065
relative to penalties for issuing bad checks and authorizing a pilot bad check restitution program. (Russman of Dist 19; Fraser of Dist 4; Colantuono of Dist 14; Gross of Merr 18 - To Judiciary)

SB 112 1033B 93-0680
prohibiting a defendant in a sexual assault case from bringing certain civil actions against the victim. (Shaheen of Dist 21; W. King of Dist 2; Record of Hills 27; McIlwaine of Graf 3; A. Merrill of Straf 8; K. Wheeler of Straf 8 - To Judiciary)

SB 113 0862B 93-0751
establishing a committee to study presumptive sentencing. (Podles of Dist 16 - To Judiciary)

SB 114 0895B 93-0907
relative to minors' settlements. (Colantuono of Dist 14; Hollingworth of Dist 23 - To Judiciary)

SB 115 0994B 93-1023
relative to the expungement of certain records. (Roberge of Dist 9; Blaisdell of Dist 10; L'Heureux of Hills 18; Milligan of Hills 18; Calawa of Hills 17 - To Judiciary)

SB 116 0948B 93-0673
relative to reporting of treatment or assistance given to victims of domestic abuse. (Shaheen of Dist 21; McLane of Dist 15; Baldizar of Dist 12; Record of Hills 27; Loder of Straf 8 - To Judiciary)

SB 117 0828B 93-0087
relative to the appointment of and payment of fees to guardians ad litem. (Podles of Dist 16; Mayhew of Coos 2; Lozeau of Hills 30 - To Judiciary)

SB 118 1078B 93-1024
relative to voting on municipal and school district issues. (Roberge of Dist 9; Wheeler of Dist 11; Colantuono of Dist 14; Domaingue of Hills 44; F. Riley of Hills 44 - To Public Affairs)

SB 119 0092B 93-1027
establishing a procedure to allow secession of one part of a municipality for the purpose of establishing a new municipality. (Roberge of Dist 9; Wadsworth of Graf 14; Metzger of Ches 13 - To Public Affairs)

SB 120 0919B 93-1013
establishing a committee to study the accountability of local agencies receiving money from towns. (Barnes of Dist 17; Salatiello of Belk 2 - To Public Affairs)

SB 121 0985B 93-0967
nullifying the law which amends RSA 457:29 relative to marriage license fees effective July 1, 1994. (Hollingworth of Dist 23 - To Public Affairs)

SB 122 1010B 93-0675
entitling Persian Gulf War veterans to the standard $50 veterans' tax credit. (Shaheen of Dist 21; Disnard of Dist 8 - To Public Affairs)

SB 123 0876B 93-0869
relative to protection from infection by the human immunodeficiency virus and the hepatitis B virus. (Fraser of Dist 4; J. King of Dist 18; Roberge of Dist 9; Senter of Rock 16; C. Kane of Rock 34; Ziegra of Belk 5 - To Public Institutions, Health and Human Services)

SB 124 1039B 93-1020
relative to the operations of state correctional facilities. (Currier of Dist 7 - To Public Institutions, Health and Human Services)

SB 125 0082B 93-0128
changing the name of the task force established for women at risk for alcohol and other abuse during pregnancy. (Baldizar of Dist 12; Burling of Sull 1; Bean of Graf 14 - To Public Institutions, Health and Human Services)

SB 126 0998B 93-0677
continuing the Lamprey regional solid waste cooperative. (Shaheen of Dist 21; Cohen of Dist 24; K. Wheeler of Straf 8; Loder of Straf 8 - To Environment)

SB 127 0993B 93-0696
requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency. (Hollingworth of Dist 23; Below of Graf 13 - To Environment)

SB 128 1059B 93-0981
relative to forest conservation. (McLane of Dist 15; Russman of Dist. 19; Cohen of Dist 24; Burnham of Ches 8; Martin of Hills 34; Gilmore of Straf 11 - To Environment)

SB 129 0991B 93-0942
relative to the overnight use of vessels and prohibiting the discharge of sewage into certain waters. (MacDonald of Dist 3; Bartlett of Belk 6 - To Environment)

SB 130 0936B 93-0688
requiring suspension or revocation of a physician's license for fraud. (Hollingworth of Dist 23; Burling of Sull 1 - To Executive Departments and Administration)

SB 131 1070B 93-0690
extending the reporting date for the committee studying gender equity in sports. (Hollingworth of Dist 23; Shaheen of Dist 21 - To Executive Departments and Administration)

SB 132 0928B 93-0703
relative to the public hearing and comment process on administrative rules. (Hollingworth of Dist 23 - To Executive Departments and Administration)

SB 133 0916B 93-0805
relative to the disciplinary, investigative and subpoena powers and the rulemaking authority of the board of chiropractic examiners. (J. King of Dist 18; Colantuono of Dist 14 - To Executive Departments and Administration)

SB 134 0949B 93-1031
establishing a committee to study the need for reasonable standards and procedures for contracting services by the state. (Shaheen of Dist 21; Fraser of Dist 4; Disnard of Dist 8; Hollingworth of Dist 23; R. Hawkins of Belk 3 - To Executive Departments and Administration)

SB 135 1004B 93-0986
establishing a commission on conciliation and mediation. (Cohen of Dist 24 - To Executive Departments and Administration)

SB 136-FN-A-LOCAL 1042B 93-0067
establishing the New Hampshire education innovation fund and making an appropriation therefor. (Russman of Dist 19; Shaheen of Dist 21; Hollingworth of Dist 23; W. King of Dist 2; Disnard of Dist 8; Aranda of Rock 13; Battles of Rock 18 - To Education)

SB 137-FN-LOCAL 0950B 93-0652
requiring municipalities to pay back to the state on a prorated basis moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes as determined by the state board of education. (Lovejoy of Dist 6 - To Education)

SB 138-FN-LOCAL 0240B 93-0265
to return general fund surpluses to the cities and towns. (Baldizar of Dist 12; Pignatelli of Dist 13; Shaheen of Dist 21; Wasson of Straf 10; D. Cote of Hills 29 - To Ways and Means)

SB 139-FN-A 0806B 93-0666
requiring the department of environmental services to design a river basin planning and assessment program and making an appropriation therefor. (Russman of Dist 19; W. King of Dist 2; Conroy of Rock 13; Leonard Smith of Hills 25 - To Environment)

SB 140-FN-A 0805B 93-0667
requiring the department of environmental services to design and propose a water use permit program for future implementation and making an appropriation therefor. (Russman of Dist 19; W. King of Dist 2; Conroy of Rock 13; Leonard of Hills 25 - To Environment)

SB 141-FN-A 0011B 93-0042
removing the drug and alcohol treatment center, boot camp and halfway house from the Laconia developmental services building and selecting a consultant and establishing a committee to study the corrections system and making an appropriation therefor. (Fraser of Dist 4; J. King of Dist 18; W. King of Dist 2; Shaheen of Dist 21; Dewhirst of Belk 7; Holbrook of Belk 7; Rice of Belk 7; Rosen of Belk 7; Turner of Belk 7 - To Public Institutions, Health and Human Services)

SB 142-FN 0671B 93-0626
intercepting the sweepstakes winnings of delinquent child support payors. (Hough of Dist 5 - To Public Institutions, Health and Human Services)

SB 143-FN 1037B 93-0644
establishing a process for policy analysis of state agencies and making an appropriation therefor. (J. King of Dist 18; Hollingworth of Dist 23; Currier of Dist 7; W. King of Dist 2; Roberge of Dist 9; Mercer of Hills 27; Dyer of Hills 8; Copenhaver of Graf 10; Jasper of Hills 23; Boucher of Rock 29 - To Executive Departments and Administration)

SB 144-FN-A 0935B 93-0671
relative to the legacies and successions tax on property jointly owned. (J. King of Dist 18 - To Ways and Means)

SB 145-FN 0975B 93-0676
relative to liquor licenses for full service restaurants. (Shaheen of Dist 21; Hollingworth of Dist 23; Russman of Dist 19; K. Wheeler of Straf 8 - To Ways and Means)

SB 146-FN-A 0914B 93-0689
regarding the use of medicaid enhancement funds. (Hollingworth of Dist 23; McLane of Dist 15; W. King of Dist 2; K. Wheeler of Straf 8; Wallner of Merr 24; Fuller Clark of Rock 31 - To Public Institutions, Health and Human Services)

SB 147 0986B 93-0715
requiring the legislative budget assistant to study the state restricted and dedicated funds. (Hollingworth of Dist 23 - To Executive Departments and Administration)

SB 148-FN 0884B 93-0733
making appropriations nonlapsing for regional vocational education tuition and transportation. (Disnard of Dist 8; Guest of Graf 10 - To Education)

SB 149-FN 0904B 93-0802
relative to land surveying by proprietorships, corporations or partnerships. (Currier of Dist 7; Salatiello of Belk 2 - To Executive Departments and Administration)

SB 150-FN 0858B 93-0926
relative to involuntary commitment and transfer to the secure psychiatric unit. (Hollingworth of Dist 23; D. Cote of Hills 29; Burling of Sull 1; O'Keefe of Rock 21 - To Public Institutions, Health and Human Services)

SB 151-FN-A-LOCAL 0859B 93-0928
requiring an animal population fee in addition to licensure fees for certain dogs and using the increase to fund a state animal population control program and continually appropriating the companion animal population control fund. (Roberge of Dist 9; Hollingworth of Dist 23; Baldizar of Dist 12; Copenhaver of Graf 10; Bagley of Hills 13; Holmes of Merr 14; Cole of Ches 11; R. Hill of Graf 1 - To Wildlife & Recreation)

SB 152 0913B 93-0979
relative to the real estate transfer tax assessment when a deed is given in lieu of a foreclosure. (Fraser of Dist 4 - To Banks)

SB 153 1011B 93-1003
limiting the liability of companies and organizations that conduct not-for-profit guided tours for the purpose of promoting tourism in New Hampshire. (Lamirande of Dist 1; Blaisdell of Dist 10; M. Hawkinson of Coos 7 - To Judiciary)

SB 154-A 0654B 93-0458
establishing a regional vocational education center in Milford and making an appropriation therefor. (D. Wheeler of Dist 11; Ferguson of Hills 13; Moncrief of Hills 13 - To Education)

SB 155 0957B 93-0719
relative to the creation of a bi-state commission for economic security. (Cohen of Dist 24; Shaheen of Dist 21; Lovejoy of Dist 6; W. King of Dist 2; Keans of Straf 16; W. McCann of Straf 11; Vaughn of Rock 35; Splaine of Rock 36 - To Interstate Cooperation)

SB 156-FN-A 0851B 93-0957
relative to the Portsmouth Naval Shipyard and making an appropriation therefor. (Cohen of Dist 24; Lovejoy of Dist 6; Blaisdell of Dist 10; Hollingworth of Dist 23; Shaheen of Dist 21; W. King of Dist 2; Buckley of Hills 44; Drake of Rock 24 - To Appropriations)

SB 157-LOCAL 1001B 93-0975
allowing municipalities to form economic development regions and create regional revenue bonds. (Cohen of Dist 24; Shaheen of Dist 21; Wadsworth of Graf 14 - To Economic Development)

1SB 158 1019B 93-1001
relative to economic security. (W. King of Dist 2; Hough of Dist 5; Fraser of Dist 4; J. King of Dist 18; J. Johnson of Merr 8; Nardi of Hills 39; D. Cote of Hills 29 - To Economic Development)

SB 159 0981B 93-1002
relative to technological development. (W. King of Dist 2; Hough of Dist 5; Fraser of Dist 4; Russman of Dist 19; Hollingworth of Dist 23; Below of Graf 13; Peyron of Sull 4; Burling of Sull 1; Weeks of Merr 24 - To Economic Development)

SB 160 0921B 93-1046
relative to qualifications for unemployment benefits. (W. King of Dist 2; Fraser of Dist 4; J. King of Dist 18; Baldizar of Dist 12; J. Johnson of Merr 8; Nardi of Hills 39; D. Cote of Hills 29 - To Insurance)

SB 161-FN-A 0971B 93-1044
establishing an economic development matching grants program and making an appropriation therefor. (W. King of Dist 2; Fraser of Dist 4; Rep. Burling of Sull 1; Rep. B. Packard of Hills 19 - To Economic Development)

SB 162-FN-LOCAL 0908B 93-0890
authorizing the sweepstakes commission to establish video lottery games. (Currier of Dist 7; Behrens of Sull 2 - To Ways and Means)

SB 163-FN-LOCAL 0934B 93-0653
requiring a balanced state budget and relative to the return of general fund surpluses to the cities and towns. (Lovejoy of Dist 6 - To Ways and Means)

SB 164-FN 0970B 93-0400
relative to the OHRV fund. (W. King of Dist 2; Currier of Dist 7; Boucher of Rock 29; Whalley of Merr 5; Pfaff of Merr 11 - To Transportation)

SB 165-FN 0256B 93-0225
relative to certification of landscape architects. (Roberge of Dist 9; MacDonald of Dist 3; Cohen of Dist 24; J. Bradley of Carr 8; Fuller Clark of Rock 31; Lyman of Carr 5 - To Executive Departments and Administration)

SB 166 1027B 93-1017
giving highest priority to a project in Hillsborough as part of the 10-year highway construction and reconstruction plan. (Currier of Dist 7; MacDonald of Dist 3; Braiterman of Merr 3; Sargent of Hills 3; Lachut of Hills 2; French of Merr 3 - To Transportation)

SB 167-FN 0192B 93-0129
encouraging restaurants to provide recycling bins at their establishments by requiring the establishment of a recycling certificate to be awarded by the department of environmental services. (Baldizar of Dist 12; A. Merrill of Straf 8 - To Environment)

SB 168-FN 1054B 93-0332
relative to oil terminal facility registration and small fuel oil facilities. (W. King of Dist 2; Dickinson of Carr 2 - To Transportation)

SB 169-FN-A 1061B 93-0401
establishing a groundwater management permit fee and a hydrogeologist position within the division of water supply and pollution control, and making an appropriation therefor. (W. King of Dist 2 - To Environment)

SB 170-FN-A-LOCAL 0965B 93-0645
relative to the distribution of meals and rooms tax revenue. (J. King of Dist 18; Currier of Dist 7; Hollingworth of Dist 23; Fraser of Dist 4; Laughlin of Hills 41; D. Cote of Hills 29; Dyer of Hills 8 - To Ways and Means)

SB 171-FN 1031B 93-0694
requiring a performance audit of the use allocation of New Hampshire's annual tax-exempt private activity bond capacity. (Hollingworth of Dist 23; Trombly of Merr 4; Burling of Sull 1; Braiterman of Merr 3 - To Executive Departments and Administration)

SB 172-FN 0880B 93-0700
making structural changes within the department of corrections. (Barnes of Dist 17; D. Sytek of Rock 26 - To Public Institutions, Health and Human Services)

SB 173 0848B 93-0701
creating a correctional industries advisory board. (Barnes of Dist 17; D. Sytek of Rock 26 - To Public Institutions, Health and Human Services)

SB 174-FN 0894B 93-0291
relative to county liability for payment when children are placed by a court order. (Pignatelli of Dist 13; D. Sytek of Rock 26; Jasper of Hills 23; Bean of Graf 14 - To Judiciary)

SB 175-FN 0903B 93-0745
relative to a compact between New Hampshire and other states and probationers and parolees. (Podles of Dist 16; Colantuono of Dist 14 - To Interstate Cooperation)

SB 176-FN-A-LOCAL 0900B 93-0754
relative to kindergarten programs in local school districts and requiring an appropriation therefor. (McLane of Dist 15; Hollingworth of Dist 23; Carter of Merr 7; Guest of Graf 10; Yeaton of Merr 10; Larson of Graf 8; Skinner of Rock 27 - To Education)

SB 177-FN 0966B 93-0919
relative to the Sagamore Creek bridge on U.S. Route 1 in the city of Portsmouth. (Cohen of Dist 24; Vaughn of Rock 35; Keans of Straf 16 - To Transportation)

SB 178-FN 0875B 93-0960
allowing the state to acquire rail properties for other transportation purposes, including recreational trails. (Blaisdell of Dist 10 - To Transportation)

SB 179-FN-A 0976B 93-0964
creating a government council on economic transition and a credit against the business profits tax for conversion of defense production to civilian production. (W. King of Dist 2; Fraser of Dist 4; Baldizar of Dist 12; Pignatelli of Dist 13; Larson of Graf 8; Teague of Merr 20; Bell of Rock 33; R. Hawkins of Belk 3 - To Economic Development)

SB 180-FN-LOCAL 0907B 93-0931
increasing the fee charged by the state on returned checks and making technical changes relating to enrollment and administrative provisions. (Disnard of Dist 8; Skinner of Rock 27 - To Banks)

SB 181-FN 0865B 93-0958
abolishing the New Hampshire retirement system special reserve account. (Blaisdell of Dist 10; MacDonald of Dist 3; Hough of Dist 5 - To Insurance)

SB 182-FN-LOCAL 0871B 93-0968
requiring tax collectors to mail a duplicate copy of a property tax bill to a lienholder, upon written request of the lienholder. (Fraser of Dist 4 - To Executive Departments and Administration)

SB 183-FN-LOCAL 0870B 93-0970
requiring the tax collector to notify certain mortgagees prior to execution of a tax deed. (Fraser of Dist 4 - To Banks)

SB 184-FN-A-LOCAL 1065B 93-0977
imposing a surcharge on tipping fees at private solid waste landfills and continually appropriating a fund to the governor's office of energy and community services. (Cohen of Dist 24; Russman of Dist 19; Fraser of Dist 4; Shaheen of Dist 21; Hollingworth of Dist 23; Gilmore of Straf 11; A. Merrill of Straf 8; J. Bradley of Carr 8 - To Environment)

SB 185-FN 0902B 93-0987
allowing the director of the division of human services to reorganize the rules of the medical assistance program. (Currier of Dist 7 - To Executive Departments and Administration)

SB 186-FN 1017B 93-1040
requiring the division of water supply and pollution control to set standards of design and construction for unconventional waste treatment systems. (W. King of Dist 2; Hollingworth of Dist 23; Cohen of Dist 24 - To Environment)

SB 187-FN 0945B 93-0911
relative to public utility ratemaking. (Colantuono of Dist 14; Barnes of Dist 17; Russman of Dist 19; S. Packard of Rock 29; McKinney of Rock 29; Lozeau of Hills 30 - To Public Affairs)

SB 188-FN 0942B 93-1043
relative to capital formation. (W. King of Dist 2 - To Economic Development)

SB 189-FN 1020B 93-1048
allowing the housing finance authority to issue guarantees of certain home mortgage loans to help provide housing security. (W. King of Dist 2; Fraser of Dist 4; J. King of Dist 18; Pignatelli of Dist 13; J. Johnson of Merr 8; Nardi of Hills 39; D. Cote of Hills 29 - To Banks)

SB 190-FN 0830B 93-0398
naming the Route 25 rest area in the town of Rumney as the Nathan Clifford Memorial Rest Area. (W. King of Dist 2; A. Brown of Graf 9 - To Transportation)

SB 191-FN 0836B 93-0683
relative to the New Hampshire real estate practice act. (Currier of Dist 7 - To Executive Departments and Administration)

SB 192-FN 0879B 93-0959
relative to supplemental allowances for retirement system members. (Blaisdell of Dist 10; Hough of Dist 5 - To Insurance)

SB 193 0995B 93-0530
relative to liability under the hazardous waste laws. (W. King of Dist 2; B. Packard of Hills 19; Musler of Straf 6; Trelfa of Graf 2 - To Environment)

SB 194-FN 1055B 93-0018
relative to seatbelt legislation. (Hough of Dist 5; McLane of Dist 15; Nordgren of Graf 10; Copenhaver of Graf 10 - To Transportation)

SB 195-FN 1066B 93-0028
relative to the division for children and youth services confidentiality statutes and providing parental access to records. (D. Wheeler of Dist 11; Kennedy of Merr 7; T. Arnold of Hills 20; Moncrief of Hills 13; S. Holley of Hills 28 - To Public Institutions, Health and Human Services)

SB 196 0977B 93-0997
relative to municipal economic development. (W. King of Dist 2; Fraser of Dist 4; Hough of Dist 5; Cohen of Dist 24; Shaheen of Dist 21; Wadsworth of Graf 14; Salatiello of Belk 2; Ham of Graf 4; Harwell of Coos 7 - To Economic Development)

SB 197-FN 1002B 93-0066
implementing Title V of the Clean Air Act. (Russman of Dist 19; Cohen of Dist 24; B. McCann of Hills 33; Leonard Smith of Hills 25; J. Bradley of Carr 8 - To Environment)

SB 198-FN 1067B 93-0409
consolidating administrative support for the regulation of health professionals. (W. King of Dist 2; S. Dowd of Rock 13; Dyer of Hills 8 - To Executive Departments and Administration)

SB 199-FN-LOCAL 0885B 93-0416
relative to eligibility for medical benefits for group II retirement system members. (Blaisdell of Dist 10 - To Insurance)

SB 200-FN-LOCAL 0888B 93-0417
relative to the payment of medical benefits to certain group II retirement system members. (Blaisdell of Dist 10 - To Insurance)

SB 201-FN-LOCAL 0961B 93-0418
determining how supplemental allowances shall be granted for retirement system members. (Blaisdell of Dist 10 - To Insurance)

SB 202-FN 1052B 93-0651
relative to special plates and windshield placards for persons with walking disabilities. (MacDonald of Dist 3 - To Transportation)

SB 203-FN-A 0964B 93-0656
clarifying the applicability of the meals and rooms tax to colleges and universities. (Hough of Dist 5 - To Ways and Means)

SB 204 0951B 93-0664
requiring certain hunters to wear hunter orange. (Podles of Dist 16; McLane of Dist 15; E. Gagnon of Hills 48; Crotty of Hills 43 - To Wildlife & Recreation)

SB 205 1035B 93-0743
limiting spotting for game. (Disnard of Dist 8 - To Wildlife & Recreation)

SB 206-FN-A-LOCAL 1029B 93-0771
imposing a supplemental tobacco tax and beer and liquor tax to fund a mandatory kindergarten program. (Lamirande of Dist 1 - To Ways and Means)

SB 207-FN 0898B 93-0778
relative to work incentives for families receiving Aid to Families with Dependent Children. (McLane of Dist 15; Wallner of Merr 24; K. Wheeler of Straf 8; J. Brown of Straf 17 - To Public Institutions, Health and Human Services)

SB 208-FN 0972B 93-0779
expanding Medicaid coverage to 185 percent of the poverty level for pregnant women and children to age 18. (McLane of Dist 15; French of Merr 3; Wallner of Merr 24 - To Public Institutions, Health and Human Services)

SB 209-FN-A 1049B 93-0782
relative to the children's health plan and making an appropriation therefor. (McLane of Dist 15; W. King of Dist 2; Wallner of Merr 24; Weeks of Merr 24; Carter of Merr 7 - To Public Institutions, Health and Human Services)

SB 210-FN 0999B 93-0783
relative to the division for children and youth services confidentiality statutes. (McLane of Dist 15 - To Public Institutions, Health and Human Services)

SB 211-FN-A 1046B 93-0947
relative to ski craft and continually appropriating a special fund. (Podles of Dist 16; J. King of Dist 18; Currier of Dist 7; Crotty of Hills 43; Malcolm of Rock 22; S. Packard of Rock 29 - To Transportation)

SB 212-FN-A 1021B 93-0924
establishing a housing security guarantee program and continually appropriating a special fund. (McLane of Dist 15 - To Banks)

SB 213-FN-A 1024B 93-0965
relative to advance reservations on rooms. (Hollingworth of Dist 23; Podles of Dist 16; J. King of Dist 18; Mercer of Hills 27; Larson of Graf 8; Nichols of Merr 2 - To Ways and Means)

SB 214-FN-LOCAL 0973B 93-0971
requiring municipalities to give notice to property taxpayers of their right to seek tax abatements, tax exemptions and other forms of tax relief; and relative to appraisals for property tax purposes and establishing a study committee on property valuation. (McLane of Dist 15; Lamirande of Dist 1 - To Public Affairs)

SB 215-FN 0912B 93-0669
providing a cost of living adjustment for group II permanent firemen members of the New Hampshire retirement system. (J. King of Dist 18; Bourque of Dist 20 - To Insurance)

SB 216-FN-LOCAL 1018B 93-0670
relative to persons and estates chargeable for support. (J. King of Dist 18 - To Public Institutions, Health and Human Services)

SB 217-FN 0857B 93-0672
clarifying the laws relative to guardianship and expanding a guardian's powers. (J. King of Dist 18; Lamirande of Dist 1; Nardi of Hills 39; Manning of Ches 9; D. Sytek of Rock 26; Senter of Rock 16; Buckley of Hills 44 - To Judiciary)

SB 218-FN 1048B 93-0674
relative to the child protection act. (Shaheen of Dist 21; Record of Hills 27 - To Judiciary)

SB 219-FN-LOCAL 0959B 93-0685
relative to the felony commitment procedure. (Russman of Dist 19; Record of Hills 27 - To Judiciary)

SB 220-FN-LOCAL 0889B 93-0730
relative to criminal history checks for school personnel and applicants. (Podles of Dist 16; J. King of Dist 18; W. Riley of Ches 7 - To Judiciary)

SB 221-FN 0750B 93-0808
relative to grandparents' visitation rights. (Podles of Dist 16; Disnard of Dist 8; McGuirk of Ches 1 - To Judiciary)

SB 222-FN-A-LOCAL 1038B 93-0908
relative to property tax relief. (Colantuono of Dist 14; Lovejoy of Dist 6; Disnard of Dist 8; J. King of Dist 18; Currier of Dist 7; Jasper of Hills 23; Blake of Rock 29; Bove of Rock 29 - To Ways and Means)

SB 223-FN 0852B 93-0948
allowing appeals of permanent impairment awards to the compensation appeals board. (Baldizar of Dist 12; Hollingworth of Dist 23; D. Cote of Hills 29 - To Insurance)

SB 224-FN 1005B 93-0952
relative to the statewide education assessment program to be funded through the regular budget of the department of education. (Lovejoy of Dist 6; Roberge of Dist 9 - To Education)

SB 225-FN 1036B 93-0962
relative to shoreland protection. (McLane of Dist 15 - To Environment)

SB 226-FN 0962B 93-0963
relative to special number plates for reserve members. (Barnes of Dist 17 - To Transportation)

SB 227-FN 0967B 93-0980
exempting from registration the issuance of certain securities. (Fraser of Dist 4 - To Banks)

SB 228-FN-A 0947B 93-0996
relative to the rate of interest on overpayments and delinquencies on taxes administered by the department of revenue administration. (Fraser of Dist 4; Delahunty of Dist 22; Baldizar of Dist 12; Mercer of Hills 27; D. Soucy of Hills 42 - To Ways and Means)

SB 229-FN-LOCAL 1016B 93-1015
relative to the requirements for sprinkler systems. (MacDonald of Dist 3 - To Executive Departments and Administration)

SB 230-FN 1057B 93-1016
relative to sprinkler systems in supported residential care facilities. (Currier of Dist 7; Dyer of Hills 8 - To Banks)

SB 231-FN-A-LOCAL 0952B 93-1028
relative to lead poisoning and control and continually appropriating a fund to the director of public health services. (Shaheen of Dist 21; J. King of Dist 18; Fraser of Dist 4; McLane of Dist 15; R. Foster of Carr 10; Wallner of Merr 24; Copenhaver of Graf 10; Nordgren of Graf 10 - To Public Institutions, Health and Human Services)

SB 232-FN-A 1041B 93-1050
relative to inventor assistance and making an appropriation therefor. (W. King of Dist 2; Hollingworth of Dist 23; Russman of Dist 19; J. King of Dist 18; Fraser of Dist 4 - To Economic Development)

SB 233-FN 1008B 93-0695
authorizing the Pease development authority to issue qualified tax-exempt private activity bonds. (Hollingworth of Dist 23 - To Economic Development)

SB 234-FN-A-LOCAL 0927B 93-0684
relative to the return of revenue to cities and towns. (Currier of Dist 7; Bourque of Dist 20; Fraser of Dist 4; W. King of Dist 2; Hollingworth of Dist 23 - To Ways and Means)

SB 235-FN-LOCAL 0978B 93-1030
relative to involuntary emergency admissions. (Shaheen of Dist 21; Podles of Dist 16; J. King of Dist 18; Loder of Straf 8; A. Torr of Straf 12; K. Wheeler of Straf 8; Gilmore of Straf 11 - To Judiciary)

SB 236-FN-A 1034B 93-1045
allowing a tax credit against the business profits tax for certain businesses. (W. King of Dist 2 - To Ways and Means)

SB 237-FN-A 0990B 93-1049
relative to venture capital. (W. King of Dist 2; Fraser of Dist 4; Delahunty of Dist 22; Cohen of Dist 24 - To Economic Development)

SB 238-FN 0943B 93-0921
permitting the transportation of manufactured housing which is up to 16 feet wide. (Cohen of Dist 24; Disnard of Dist 8; Currier of Dist 7; Buckley of Hills 44; Salatiello of Belk 2 - To Transportation)

SB 239-FN-LOCAL 0997B 93-1019
relative to the public utilities commission. (Currier of Dist 7 - To Executive Departments and Administration)

SB 240 1015B 93-1026
relative to the workers' compensation appeals board. (Roberge of Dist 9; Delahunty of Dist 22; R. Hawkins of Belk 3; Messier of Hills 46; D. Kelley of Hills 15 - To Insurance)

SB 241-FN-A 0893B 93-0736
increasing the cap on the continually-appropriated revolving fund for educational publications. (Hollingworth of Dist 23; Skinner of Rock 27 - To Education)

SB 242-FN 0982B 93-1042
relative to capital access and the business finance authority. (W. King of Dist 2; Fraser of Dist 4; Burling of Sull 1; B. Packard of Hills 19 - To Economic Development)

SB 243 1050B 93-0945
relative to an agricultural workers' compensation exemption. (Disnard of Dist 8 - To Insurance)

SCR 1 0867B 93-0944
in support of an intercity passenger rail system. (Hollingworth of Dist 23; Cohen of Dist 24; Shaheen of Dist 21; A. Merrill of Straf 8; Gilmore of Straf 11; Klemarczyk of Rock 20; Senter of Rock 16; Woods of Rock 25 - To Transportation)

SCR 2 0929B 93-0972
relative to the James Bay II project of Hydro-Quebec. (Cohen of Dist 24; B. Hall of Hills 20; Gilmore of Straf 11 - To Environment)

INTRODUCTION OF HOUSE BILLS

Senator Delahunty offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 104 - 234 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 104-FN-L, amending the way in which the town's of Londonderry and Sunapee shall collect their taxes for the fiscal year ending June 30, 1994. Executive Departments & Administration committee.

HB 234, relative to the Winnisquam regional cooperative school district and the Tilton and Northfield Union School district. Education Committee.

RESOLUTION

Senator Disnard moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Thursday, February 4, 1993 at 1:25 p.m.

Adopted.

LATE SESSION

Senator Disnard moved that we adjourn.

Adopted.

Adjournment.

February 4, 1993

The Senate met at 1:25 p.m.

A quorum was present.

SENATOR HOUGH (In the Chair): Members, before we have our opening prayer, I would like to recognize Father David Jones from St. Paul's Episcopal Church, which is across the street. As many of you know, since 1972 the Chaplain for the Senate has been our beloved Father Fischer. During the last biennium, Father Fischer and Mrs. Fischer have been plagued with ill health. In their absence, Father Jones has helped us by being available for the opening prayer. Today I am recognizing Father Jones as our new permanent Senate Chaplain. Father Jones will be available to the membership and our staff and if he has not met with you personally to extend greetings, he will be in the coming weeks. Father Jones is very interested in working with the membership to establish a program whereby a visiting clergy person could be a guest of the membership and he would be more than happy to help you in making those arrangements. Before we have our opening prayer offered by our Senate Chaplain, Father Jones, I would hope that you would join me in welcoming him. Father Jones.

FATHER JONES: To say that I am honored is an understatement. Thank you. Ralph Waldo Emerson once commented that "democracy becomes a government of bullies tempered by editors". You really do not strike me as a bunch of bullies, at least not compared to some editors I know of. So please today begin to gently lead us in the direction of what we really need, not just what we think we want. And here is some help:

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

Gracious, patient and generous God, may the ears of each Senator here function today twice as well as their mouths; may their hearts be as tender as their convictions are firm; and may you become for them the only editor whose word is final. Amen.

FATHER JONES: I am around for you anytime and in anyway.

Senator Barnes led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Senate Interns

University of New Hampshire Senate Interns

Dawn Benson - Senator Lamirande.

Charlie Byrne - Senator Fraser.

Matthew Cole - Senator Currier.

Kelly Connor - Senator Pignatelli.

Mark Fischler - Senator W. King.

Jonathan Flewelling - Senator Hollingworth.

Eric Gibbs - Senator MacDonald.

Andrew Howard - Senator Shaheen.

Robert O'Brien - Senator Russman.

Dan Palermino - Senator Bourque.

Bryan Piller - Senator Cohen.

Gregory Prindle - Senator Colantuono.

Paul O'Neil - Senator Barnes, Senator Wheeler.
Carol Crocker - Senator McLane.
Dan Putney - Senator J. King.
Juliet Zarohian - Senator Lovejoy.

St. Anselm College Senate Intern

Christine Hanisco

Research Interns

Ray Sierpina
Bryan Morin

Senate Staff

Jacqueline Clark - Senate Secretary.

SENATOR ROBERGE (Rule #44): Mr. President and members of the Senate, I would like to take this opportunity to thank Senator Fraser for our wonderful designer name tags. I know that we will all enjoy wearing them. They are so much nicer than those old plastic green ones and I wish to thank you again, Senator Fraser, on behalf of the Senate.

HOUSE MESSAGE

The House of Representatives has passed a Resolution with the following title in the passage of which it asks the concurrence of the Senate:

HCR 11, relative to the Portsmouth Naval Shipyard.

INTRODUCTION OF HOUSE BILL

Senator Shaheen moved that it be RESOLVED, that in accordance with the list in the possession of the Clerk, House Concurrent Resolution #11 shall be by this resolution read a first and second time by the therein listed title, and referred to the therein designated committee.

Adopted.

First & Second Reading & Referral

HCR 11, relative to the Portsmouth Naval Shipyard.

SUSPENSION OF THE RULES

Senator Shaheen moved that the Rules of the Senate be suspended to dispense with referral to committee, the holding of a hearing, the notice of a hearing and committee report in the calendar, and that the Resolution be put on Second Reading at the present time. On HCR 11 relative to the Portsmouth Naval Shipyard.

Adopted by necessary 2/3rds vote.

Ordered to third reading.

SENATE RULES

Senator Russman moved the following amendment to the Senate Rules as proposed by the Rules Committee.

Amend Senate Rule 27 to read as follows:

27. The committees of the Senate shall be divided by 5 divisions. The Finance Division shall include The Finance Executive Committee, The Committee on Capital Budget, The Committee on Ways and

Means, The Committee on Appropriations. The Economic Resource Division shall include The Committee on Economic Development, The Committee on Banks, The Committee on Insurance, The Committee on Transportation. The Environmental Resources Division shall include The Committee on Environment, The Committee on Wildlife and Recreation. The Government Operations Division shall include The Committee on Executive Departments and Administration, The Committee on Interstate Cooperation, The Committee on Judiciary, The Committee on Public Affairs, Senate Administration, (including the Committees on Rules and Resolutions, Journal, and Enrolled Bills). The Human Resources Division shall include The Committee on Public Institutions, Health and Human Services, and The Committee on Education.

Amendment adopted.

SENATE RULES

Senator Russman moved the following amendment to the Senate Rules as proposed by the Rules Committee.

Amend Senate Rule 24 to read as follows:

24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Division on Finance for review. If any such bills have been referred jointly to the Division on Finance and another standing committee, the Division on Finance may report separately and a further public hearing may be held at the discretion of the Division on Finance. All bills appropriating money, which are referred directly to the Division on Finance shall have a hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.

Amendment adopted.

SUSPENSION OF THE RULES

Senator Russman moved that Senate Rule 17a and 17b be suspended to allow the introduction of Senate Bills 244-247 after the deadline as approved by the Senate Rules committee.

Adopted by necessary 2/3rds vote.

Recess.

Out of recess.

INTRODUCTION OF SENATE BILLS

First and Second Reading and Referral

Senator Russman moved that in accordance with the list in the possession of the Clerk, Senate Bills numbered 244-247 as approved by the Senate Rules Committee shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

SB 244 1315B 93-1067
increasing the penalties for persons convicted of negligent homicide, including mandatory license revocation. (Roberge of Dist 9 - To Transportation)

SB 245 1304B 93-1068
changing the penalties for driving while intoxicated or under the influence of drugs. (Roberge of Dist 9 - To Transportation)

SB 246 1301B 93-1069
making riding a bicycle while intoxicated a violation. (Roberge of Dist 9 - To Transportation)

SB 247-FN 1305B 93-1070
clarifying who is subject to refusal of consent provisions for DWI under the OHRV and boating laws and requiring blood alcohol testing in certain boating accidents. (Roberge of Dist 9 - To Transportation)

Adopted.

RESOLUTION

Senator Shaheen offered the following Resolution:

SR 3

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

urging the Federal Communications Commission to enact regulations to preclude cable television companies from charging for more than one cable connection per residence.

SENATOR SHAHEEN: Senator Colantuono and I served over the summer on a study committee that was looking at rates relative to cable television. The study committee disbanded because of federal legislation that was passed, as you all heard, I am sure. We felt that it would be inappropriate for the committee to make any recommendations until we knew what the impact of the new federal law was going to be; however, given that they will be making rules to go along with that law sometime this spring, we felt that it was appropriate to send out a very strong resolution urging them in those rules to recommend that cable companies can only charge for one cable hookup per household. That is basically what this resolution does. So I would urge the Senate to support it.

Adopted.

Senator W. King in opposition to SR 3.

COMMITTEE REPORTS

SB 29-FN-A, an act making an appropriation to the department of postsecondary technical education to support a pilot satellite program in Haverhill to promote north country economic development. Economic Development committee. Ought to Pass. Senator W. King for the committee.

SENATOR W. KING: SB 29-FN-A provides an appropriation to the Department of Postsecondary Technical Education to support a very unique satellite program, technical education program, in the Haverhill New Hampshire area. It is a partnership between local businesses and

local community development leaders, the local public school system and the technical school, where the technical school is providing the professors to teach the classes and the public school system is providing the space to have those classes so that it can be done cheap, but providing good education for many people in the Haverhill area who are looking to improve their skills so that they are more marketable in the job arena and we urge its passage.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 7, an act changing the bonding requirement for mortgage brokers. Banks committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: SB 7 was introduced because of the difference between mortgage bankers and mortgage brokers. Currently the banking department requires that mortgage bankers and mortgage brokers demonstrate a net worth of $100,000 or post surety or insurance in that same amount. Because mortgage brokers are not mortgage bankers and do not make the mortgage loan, it seemed to the sponsor and the Banks committee that it was unnecessary for mortgage brokers to have to put up the same surety as the actual lender. The bill does require that mortgage brokers, or any person who does not actually fund the loan, post a minimum surety bond of $10,000 to the Bank Commissioner. The committee recommends that the bill ought to pass.

SENATOR COLANTUONO: In honor of our friend, Senator Nelson, who always liked to make sure that these bills protected the people, I just wanted to ask a question. Do mortgage brokers ever handle amounts of money in excess of $10,000 in the course of a transaction?

SENATOR LAMIRANDE: No, Senator Colantuono. The mortgage brokers would probably be handling an amount of approximately $300 to $500 which would be an application fee and only an application fee. That is only held until such time that the mortgage loan closes. It is held in an escrow account.

SENATOR COLANTUONO: Thank you.

Adopted.

Ordered to third reading.

SB 22, an act relative to foreclosure notification waiver. Banks committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: Mr. President and members of the Senate, the purpose of this bill is to clarify any ambiguity in the existing foreclosure practice by validating past and future foreclosure sales impaired by the failure to give proper notice due to all parties. It permits a party that did not receive notice of a foreclosure sale to voluntarily waive the right to receive notice. Because of the language of the foreclosure statute, foreclosure sales are deemed null and void if all provisions of this statute were not followed. The statute would permit parties to voluntarily cure foreclosure sales which are defective because of a lack of notice to all parties. It will avoid wasteful re-foreclosures, eliminate clouds on titles and clarify what is now an unclear area of the law. The bill does not require any party to waive its right to receive notice of a foreclosure without its consent. It also validates consents and waivers given prior to the effective date. So it doesn't require any party to waive its right. I just wanted to make that clear.

Adopted.

Ordered to third reading.

SB 31, an act repealing sections referring to the loyalty oath requirement which was repealed last year. Education committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 31 removes four sections. That is the rest of RSA 191, the teachers loyalty oath. Section one was removed in the last session which leaves the rest of the sections totally meaningless. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

SB 34-FN-LOCAL, an act including traumatic brain injury and autism in the definition of "educationally disabled child." Education committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill basically does one thing and that is to bring the definition of the educationally disabled child into order with the federal standards. It was a request of the State Board of Education.

Adopted.

Ordered to third reading.

SB 154-A, an act establishing a regional vocational education center in Milford and making an appropriation therefor. Education committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: I am a glutton for punishment, I guess. The purpose is to establish a vocational educational center in Milford. It is to expand on the vocational education and give an opportunity for area students, seniors and juniors, to be able to take an opportunity to be able to attend. Right now they presently have approximately five courses that are being offered and this would give an opportunity to expand on those courses. The committee recommends that it ought to pass.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 16, an act relative to the composition of the wetlands board. Environment committee. Inexpedient to Legislate. Senator Russman for the committee.

SENATOR RUSSMAN: This bill is an effort to further expand the Wetlands Board by adding a member of the Marine Dealers Association. After hearing testimony, the committee cannot see the need for any further expansion of the Wetland Boards and we move inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 49, an act establishing a committee to study the feasibility of establishing a commercial shellfish and oyster aquaculture program. Environment committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: Currently based on unacceptable shellfish water classification, no shellfish grown in New Hampshire waters may be sold commercially nor transported into state. This legislation proposes to consider the feasibility of an aquaculture program based on commercial oyster fishing in New Hampshire. It provides an opportunity to carefully evaluate how we manage our shellfish resources and another chance

for the state to evaluate a shellfish sanitation program. I understand that there is a floor amendment which Mr. Wiggin is passing out. It will amend section two of the bill by inserting after paragraph six the following paragraph, VII.

Recess.

Out of recess.

SENATOR HOLLINGWORTH: I would now like to ask the Senate to approve this amendment. Unfortunately, I inadvertently, when I drafted the bill, left off a member from the Department of Public Health and Human Services. They currently do all of the testing of the shellfish, so it would be most important to have their presence on this study committee because they would be able to offer valuable information. I would hope that the Senate would approve of one more addition, one more member to this study committee.

Senator Hollingworth offered a floor amendment.

1326B

Floor Amendment to SB 49

Amend section 2 of the bill by inserting after paragraph VI the following new paragraph:

VII. The director of the division of public health, department of health and human services, or designee.

Floor amendment adopted.

Ordered to third reading.

SB 75, an act allowing a property tax exemption for solar-powered electricity. Environment committee. Ought to Pass. Senator W. King for the committee.

SENATOR W. KING: This merely extends the local option that exists right now for other kinds of renewable energy sources that grants a small exemption on property tax, if the community votes to have it, to solar electricity. The committee urges its passage.

SENATOR COLANTUONO: Senator King, how many other types of these energy sources do we give these exemptions for?

SENATOR W. KING: Wood, solar space heating, solar hot water heating and I am forgetting one other. Oh yes, wind power. What it does essentially, Senator Colantuono, is say that the exemption is only on the value that you add to the property by using this.

SENATOR BARNES: Senator King, could you tell us on these other exemptions what they vary from town to town, from city to city, that have them in place now and what we might be looking at here for an exemption average?

SENATOR W. KING: The communities vote whether or not that they want to have this exemption and there are, I am estimating, there are about 50 communities that have various kinds of exemptions that they have voted to have. For example, Rumney has one for wood and for solar energy.

SENATOR BARNES: You are familiar with Rumney, obviously, could you tell us what the exemption is in your town for those two items that you just mentioned?

SENATOR W. KING: The same thing. I was telling you only because I knew because Rumney is my town.

SENATOR BARNES: I am asking for the dollar amount.

SENATOR W. KING: I am sorry. I do not know what the dollar amount is.

SENATOR BARNES: I heard you say in your testimony that it was a small amount of money. I was wondering what a small amount of money was, that is all.

SENATOR W. KING: The community decides whether or not to have it or not. It is based upon the value that it has added to the property by the addition that you make. So in other words, if it costs me $5,000 to add solar photovoltaic on my house, there is a small exemption based on that $5,000 cost.

SENATOR BARNES: Thank you very much.

Adopted.

Ordered to third reading.

SB 51, an act relative to the authority of land surveyors to enter upon land. Executive Departments & Administration committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill authorizes the land surveyors to enter upon land and perform land surveying without liability for trespassing. During the hearing, it came to light that there were some significant problems relative to this and we were extending this courtesy to provide for accurate land surveying throughout the State of New Hampshire by allowing people who legitimately do land surveying to cross over other people's lines because, obviously, you cannot do the proper land surveying without entering other people's property. You still have to get permission to cut any lumber or any brush or anything on that land. You can't do any damage or anything on that land. So basically, it just authorizes them to go onto the lot to establish bounds for the accurate readings of land surveying.

Adopted.

Ordered to third reading.

SB 72, an act relative to central business service districts. Executive Departments & Administration committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: This was ought to pass but there was some discussion with an amendment so I would like to make a motion to recommit this piece of legislation back to committee.

MOTION TO RECOMMIT

Senator Bourque moved to recommit **SB 72**, an act relative to central business service districts, to the Executive Departments & Administration committee.

Adopted.

SB 72 is recommitted.

SB 131, an act extending the reporting date for the committee studying gender equity in sports. Executive Departments and Administration committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: It is a very easy housekeeping bill as far as we are changing the date to go to November of 1993 instead of 1992. They

just felt that if they had more statistics to work with and there was a questionnaire that was sent out and they are waiting to hear from those returns, so they would like to extend the date to November 1993. It should be ought to pass.

Adopted.

Ordered to third reading.

SB 135 an act establishing a commission on conciliation and mediation. Executive Departments and Administration committee. Interim Study. Senator Colantuono for the committee.

SENATOR COLANTUONO: This bill was brought in by a group, basically at the last minute. During the hearing it developed . . . it wasn't a very well thought out or put together bill. Everyone at the hearing felt that it needed a lot of work. It has somewhat of a good concept but there is no clear picture of the cost, no clear delineation of the duties involved, no clear indication that it is needed anyway because there are a lot of mediators out there in the private sector working for these things and it is unclear why there is a need for a state board. But rather than vote the bill inexpedient and prohibit the group from coming back for another two years, we decided to make a motion of interim study and if they wanted to rework the bill, they would be able to bring it back next year.

Adopted.

SB 135 is sent to interim study.

SB 147, an act requiring the legislative budget assistant to study the state restricted and dedicated funds. Executive Departments and Administration committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: In these difficult times of budget constraints and so forth, we are all faced with looking at various sources of revenue and so forth and we all come upon situations where there are state restricted or dedicated funds and ironically enough, they are by department and there is really no clear, at least no succinct listing of all of those dedicated funds and how they are related to one another or not related to one another. Basically this bill will request the legislative budget office to conduct a study to put this all into a format so that not only members of the Senate, but House members and the general public would have a better understanding of where these funds are and what they are related to, rather than try and have one of us try to put all of that information together and put it into some published form. The committee urges your support in passage of the bill.

Adopted.

Ordered to third reading.

SB 149-FN, an act relative to land surveying by proprietorships, corporations or partnerships. Executive Departments and Administration committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill authorizes the issuance of a certificate of authorization to any proprietorship, corporation or partnership to engage in the practice of land surveying. What has happened over the last number of years is that there have been some problems with enforcement with the statute regarding whether or not someone was in fact an authorized surveyor. At the hearing there were a number of people in the profession who indicated through testimony and exhibits that there were

people who were actually advertising that they were land surveyors and so forth who in fact were not. But they were going and taking the plans of surveys to an authorized surveyor who was then putting his stamp on the plans and so forth. The bill as submitted does not have any amendments to it and it basically . . . and the reason that I say that is that Senator Disnard was asking me a question before I stood up whether something was taken out of it which I wasn't aware of, but there have been no amendments to the bill as it was submitted. The committee urges your adoption of the report.

Senator Disnard moved to have **SB 149-FN** an act relative to land surveying by proprietorships, corporations or partnerships, laid on the table.

Adopted.

LAID ON THE TABLE

SB 149-FN, an act relative to land surveying by proprietorships, corporations or partnerships.

SB 18, an act increasing the amount of damage required to necessitate reporting a boating accident. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: This bill increases the limit on reporting boating accidents to the Department of Safety from $200 to $500. There was much testimony that said that a small scrape of paint is $500 on one of these boats today. This would save paperwork and would change nothing at all as far as investigations or any of the other situations. The committee would ask ought to pass.

Adopted.

Ordered to third reading.

SB 24, an act relative to record retention by insurers. Insurance committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to ask inexpedient to legislate on this piece of legislation. The sponsor had all good intentions but he later discovered and learned that the National Association of Insurance Commissioners were in the process of promulgating a model rule which would be used throughout the country if it were to be adopted. It is very important to some of the domestic carriers who are licensed in all 50 states and it would be to their advantage if it were uniform so far as the record retention is concerned. So we would ask inexpedient to legislate with the support of the sponsor.

Committee report of inexpedient to legislate is adopted.

TAKEN OFF OF THE TABLE

Senator Disnard moved to have **SB 149-FN**, an act relative to land surveying by proprietorships, corporations or partnerships taken off of the table.

Adopted.

SB 149-FN, an act relative to land surveying by proprietorships, corporations or partnerships. Ought to pass.

SENATOR LAMIRANDE: Senator Currier, the bill states and you read, "and owner and or an employee of any proprietorship or an officer, employee or agent of any corporation or any partner, employee or agent

of any partnership who is licensed under this subdivision shall be authorized to practice or to offer to practice land surveying in this state." Could not that be construed as a conflict of interest?

SENATOR CURRIER: Senator, sometimes in the analysis the way that it is worded is a little bit different from the way that it is actually in the bill itself. What the bill does is that it takes, if you are a corporation or a proprietorship or whatever, you have to have a licensed surveyor on the staff to be able to advertise that you perform surveying. In other words, you can't go to somebody and buy their stamp or have their stamp on your plans without any scrutiny or so forth.

SENATOR LAMIRANDE: The way that I read this, Senator Currier, is that if I own a business, I am a proprietor of a business and I know how to do surveying and I am a licensed surveyor, I can do my own surveying. That is the way that I am interpreting this bill.

SENATOR CURRIER: What section are you specifically referring to?

SENATOR LAMIRANDE: It is stated in several sections the same way, proprietor or an owner that is licensed can do their own surveying.

Recess.

Out of recess.

SENATOR CURRIER: At this particular point, now that the confusion has been fairly well straightened out, I move that we just move on the adoption of the committee report.

SENATOR BARNES: Senator Currier, you just said that the confusion has been cleared up, could you do me a favor and clear me up before I vote on this, the questions that were asked by Senator Lamirande?

SENATOR CURRIER: There is not a conflict of interest as Senator Lamirande thought.

SENATOR BARNES: Okay, and you both agree on that?

SENATOR CURRIER: Yes.

Adopted.

Ordered to third reading.

SB 25, an act relative to charitable life gifts and life insurance contracts. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1189B

Amendment to SB 25

Amend the title of the bill by replacing it with the following:

AN ACT

relative to charitable gifts of life insurance.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Charitable Gifts of Life Insurance. Amend RSA 408 by inserting after section 2 the following new section:

408:2-a Charitable Gifts of Life Insurance.

I. A life insurance policy may be issued with the person paying the premiums for such insurance having no insurable interest in the life of the insured, providing a charitable, benevolent, educational, or religious institution, or any other organization which qualifies for a charitable

deduction under the Internal Revenue Code is designated irrevocably as the owner and beneficiary of the policy.

II. A life insurance policy may be issued with the person paying the premiums designated in the application as owner and insuring the premium payer's own life and designating a charitable, benevolent, educational, or religious institution or any other organization which qualifies for a charitable deduction under the Internal Revenue Code as the irrevocable beneficiary of the policy.

III. Nothing in this section shall affect the right of any person to effectuate life insurance on such person's own life, or by a person or any business entity on another life if there exists any reasonable expectation of pecuniary benefit or advantage, direct or indirect, in the continued life of the other person.

2 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill allows life insurance policies to be issued in which the person paying the premium has no insurable interest in the life of the insured provided that a charitable, benevolent, educational, or religious institution is designated as the irrevocable owner and beneficiary of the policy.

The bill also allows life insurance policies to be issued in which the person paying the premium is designated as the owner and the policy insures the life of the owner and designates a charitable, benevolent, educational, or religious institution as the irrevocable beneficiary.

SENATOR HOLLINGWORTH: The committee would like to offer the motion of ought to pass with amendment. This bill would permit one to purchase a life insurance policy naming the charity as the beneficiary and would not prevent them to take a tax deduction for the premium. It does not give away any new benefits. It does stop the IRS from challenging those deductions. The amendment clarifies language that wasn't consistent with part one and part two. We would ask ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 20, an act relative to representation of business organizations in small claims court. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1270B

Amendment to SB 20

Amend the bill by replacing all after the enacting clause with the following:

1 Representation of Business Organizations in Small Claims Court. RSA 503:11 is repealed and reenacted to read as follows:

503:11 Representation of Corporations and Other Business Organizations.

I. Notwithstanding RSA 311:11, and to the extent not inconsistent with court rules, an officer, employee, partner, owner or trustee, as applicable, of a corporation, partnership, or trust who presents written authorization and who is not an attorney but is appearing for the organization, may represent the organization in an action cognizable as a small claim under this chapter before a district or municipal court for the pur-

poses of entering a plea or answer on behalf of the organization, or otherwise representing the organization during the course of the small claim proceeding.

II. The requirement for written authorization in paragraph I shall be met by a document, signed by a duly authorized representative of the organization and containing a certificate of acknowledgment to the signature, authorizing the representation by a particular individual in a particular matter, and acknowledging that the organization shall be bound by any agreement entered into by such individual or any order of the court in the matter. Any such written authorization shall be presented to the court under oath by the representative.

III. Nothing in this section shall prevent the court from denying representation by any individual it deems to be improper, inappropriate or unable to adequately represent the interests of the organization.

IV. "Duly authorized" as used in paragraph II shall mean:

(a) For a corporation, a resolution adopted by the board of directors.

(b) For a partnership, an authorization signed by all general partners.

(c) For a trust, an authorization signed by all trustees.

2 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill allows any corporation, partnership or trust to be represented in small claims court by an officer, employee, partner, owner, or trustee, provided that such person has been duly authorized by the organization in writing and that the document has been executed according to the provisions set forth in the law.

SENATOR COLANTUONO: This amendment is found on page five of the calendar. This bill basically goes one step further than what we did last year. Last year we allowed trusts, corporations and partnerships to appear in small claims court through one of their individual members without having to hire an attorney if they had six or fewer stockholders, partners or beneficiaries. The committee felt that that was an arbitrary standard and there was no reason not to allow any business form to appear in small claims court without the need to hire an attorney as long as it is clear that the person who was appearing for them is duly authorized to do that. The amendment on page five makes it clear what "duly authorized" means and with the amendment the committee recommends ought to pass.

Amendment adopted.

Ordered to third reading.

SB 21, an act permitting records to be copied, reproduced and stored on electronic, magnetic, video, digital or optical imaging media and allowing the reproduction of such records to be admissible in evidence. Judiciary committee. Inexpedient to Legislate. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 21 allows copies of records reproduced from media to be admissible as evidence. Because of the constantly changing technology it was felt that this issue might be better dealt with in the rulemaking process and postponed any legislative action until such time as the questions of environmental factors as well as longevities of the materials has been answered. Banks and other institutions do not

have to keep their records permanently and it would be better for them to deal with this on an individual basis. The committee recommends inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 48, an act relative to the children's trust fund. Judiciary committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: The Childrens Trust Fund was started in 1986 to offer grants to agencies in groups to put an end to child abuse. Since the fund was first started they have already reached their original goal of $500,000 and would like to reach the next step of $1 million. In order to reach the goal, the time limit for the solicitation and collection of monies needs to be extended. This bill also gives the trust fund the authority to receive funds from other sources. In addition to the extension of the date, the board would like to increase their numbers. In adding additional members the bill deletes certain agencies which no longer exist and deletes the reference to when the board was originally set up. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

SB 59, an act relative to the privacy act. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 59 was sponsored by the request of the Department of Justice. In 1992, HB 758 was passed in an attempt to deal with the right to privacy of certain credit records and the need to obtain financial records for criminal investigations. Over the course of the summer, it was discovered that "creditor" had not been adequately defined and had inadvertently left out "credit card issuers" such as Visa and the Mastercard. As a result, it could be read to apply not just to traditional credit card companies, but to any company which happens to allow late payment of bills with the imposition of a monetary penalty and this would have exceeded the intent of the legislature and would impose difficult constraints upon the law enforcement authorities ability to obtain certain documents. SB 59 now clarifies the law and defines the "creditor" and includes those traditional credit card issuers which is the Mastercard and also the Visa. The committee recommends ought to pass. This was sort of a controversial section of the bill at the beginning, but I hope that I have now clarified it.

Adopted.

Ordered to third reading.

SB 60, an act relative to solicitation of prostitutes. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1266B

Amendment to SB 60

Amend the bill by replacing section 1 with the following:

1 Prostitution; Definition Modified. Amend RSA 645:2, I(f) to read as follows:

(f) Pays, agrees to pay, or offers to pay another person to engage in [sexual conduct] ***sexual contact as defined by RSA 632-A:1, IV, or sexual penetration as defined by RSA 632-A:1, V with the payor or with another person.***

AMENDED ANALYSIS

This bill makes a person guilty of a misdemeanor if such person pays, agrees to pay or offers to pay another person to engage in sexual contact or sexual penetration with the payor or another person. Current law refers only to sexual conduct.

SENATOR COLANTUONO: Recently the legislature passed a law to make it more clear that persons who solicit prostitutes are guilty equally as well as those who engage in the act. When we passed the law we said that it was illegal to pay or offer to pay someone to engage in sexual conduct and as soon as the law was tested in court the court threw it out because sexual conduct is not a term defined anywhere in our criminal code. So this bill was brought in to straighten out that problem. What we have done is on page five. The committee amendment simply strikes that term and uses the term "sexual contact" which is defined in the rape statute, 632:A.

Amendment adopted.

Ordered to third reading.

SB 63, an act relative to impoundment of motor vehicles in which an act of prostitution has occurred. Judiciary committee. Interim Study. Senator Hollingworth for the committee.

SUBSTITUTE MOTION

Senator Hollingworth moved to substitute recommit for interim study.

Adopted.

SB 63 is recommitted.

SB 13, an act extending the reporting date of the committee studying the effects of substance abuse on health care and economic costs to the state. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: This truly, of all of the bills that we are going to do today, is the easiest of all. All that this is asking for is to extend the reporting date. What happens very often with committees is that they get a little bit of information and this committee, however, has received an awful lot of information and in order to process it all and to do the job properly they are asking for an extension.

Adopted.

Ordered to third reading.

SB 2-FN, an act redesignating a portion of New Hampshire Route 51 as New Hampshire Route 101. Transportation committee. Ought to Pass with Amendment. Senator Cohen for the committee.

1218B

Amendment to SB 2-FN

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

SENATOR COHEN: If you have ever driven from Manchester over to Portsmouth by Route 101 you will know why this bill is necessary. This was requested by many citizens of the Town of Stratham where the current Route 101 goes. The point is to ease the traffic burden. We now have

a local road attempting to serve as a major East-West highway. It is very difficult to pull out onto the road. There were many, many accidents. The effect of the change in the designation of what is now Route 51 into being Route 101 would just direct motorists to proceed straight on what is now Route 51, which will soon be a four-lane highway. It would also direct people to go toward . . . Route 51 would become 101 and it would go right to Route 1-A and if people wanted to go to Manchester to Portsmouth they would proceed through the toll booths and perhaps direct more revenues into our state coffers. There was no opposition to this bill. It has the support of all of the State Representatives in the affected towns. Most of the selectmen of the Town of Stratham and all of the selectmen in the Town of Greenland support it. The only cost will be in the reconstruction of some new signs. The bill was amended in committee to make it become effective upon passage. The committee urges your passage. Thank you.

SENATOR CURRIER: There is a committee amendment correct?

SENATOR HOUGH (In The Chair): The motion is on the committee amendment.

SENATOR COLANTUONO: I just want to ask, Senator Cohen, what is current Route 101 going to be called?

SENATOR COHEN: That would be Portsmouth Ave or possibly Greenland Ave. The people in Greenland want to work on that as well.

SENATOR BARNES: Actually I don't have a question. It is a compliment to Senator Cohen and the other people on this bill. I am not speaking to the amendment because the amendment just changes the effective date upon passage, but to the bill itself I would like to say a couple of words. I would just like to say that giving directions from 20 miles away from Hampton Beach for the last 15 years has been very complicated and many of our folks that have been headed for Hampton Beach to enjoy the summer end up getting there in the fall when people tell them to go on Route 101, go west young man or go east young man and they end up God knows where. This is certainly going to make it a lot easier for the people and the tourists coming through to get directions from the outer towns to get to the coast. I compliment Senator Cohen and the rest of the sponsors.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 80, an act restricting the use of motorized craft on Goose Pond in Keene. Transportation committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

1299B

Amendment to SB 80

Amend the title of the bill by replacing it with the following:

AN ACT
restricting the use of motorized craft on Goose Pond
in Keene and Turee Pond in Bow.

Amend the bill by replacing section 1 with the following:

1 New Sections; Motorized Craft Prohibited. Amend RSA 270 by inserting after section 124 the following new sections:

270:125 Goose Pond. No person shall use or operate a boat or any other watercraft equipped with any type of power motor on Goose Pond in the city of Keene. Any person who violates this section shall be guilty of a violation.

270:126 Turee Pond. No person shall use or operate any powerboat equipped with any type of power motor in excess of 10 horsepower on Turee Pond in the town of Bow. Any person who violates this section shall be guilty of a violation.

AMENDED ANALYSIS

This bill prohibits the use of motorized craft on Goose Pond in Keene.

This bill also limits the use of power boats on Turee Pond in Bow to 10 horsepower.

SENATOR LAMIRANDE: The bill prohibits the use of motorized craft on Goose Pond in Keene and amended to read, "Restricting the use of motorized craft on Goose Pond in Keene and Turee Pond in Bow", basically because Goose Pond is not that large. It is about 42 acres and it is part of a large forest reserve. It is public land owned by the city of Keene. Presently there is some ice fishing that is permitted on it. The committee voted that the bill ought to pass with the amendment that limits the use of the power boats in Bow to 10 horsepower. The committee again voted that it would pass as amended.

Amendment adopted.

Ordered to third reading.

SB 102, an act establishing a committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on the state and to study certain incentives and propose a state policy regarding the use of alternative transportation fuel vehicles. Transportation committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: Alternative fuels are not tomorrow's technology, but today's. They have great potential to improve state's air quality and our economy and this is the time to study and it is overdue at this time. I would urge its passage.

Adopted.

Ordered to third reading.

SB 164-FN, an act relative to the OHRV fund. Transportation committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill increases the amount of money that will be used for trail maintenance of the snowmobile trails in the north country and actually throughout the state, from $4.50 to $9, based on the OHRV registrations in the state. The competitive nature of the tourism business was quite evident in the discussion of this bill during the Senate hearing. There were indications that the Canadians and those who live in Maine and those who live in Vermont who do also compete for the tourist business put a lot more dollars into the trail maintenance and the operation of the trails in those particular locations. The request here is to increase that so that we can keep pace with what is happening in those other regions of not only our country, but in Canada. This money is reimbursed; it is taken from the road tolls collected, but it is reimbursed to that fund from the uncollected refunds for the gasoline that is used for off-highway vehicles. One of the enlightening discussions that came out in the hearing was that the estimates by the Department of Resources and Economic Development is that snowmobiling in the state of New Hampshire brings with it a $55 million booty in terms of those kinds of

funds that are generated by that tourist attraction to the state of New Hampshire. This investment in those trails will help increase and continue that trend.

Adopted.

Ordered to third reading.

SB 190-FN, an act naming the Route 25 rest area in the town of Rumney as the Nathan Clifford Memorial Rest Area. Transportation committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, SB 190 has to do with renaming Route 25 to the Nathan Clifford Memorial Rest Area. It was pointed out to us in the committee that Nathan Clifford was a distinguished Federal Supreme Court Judge in the 1800's. The Town of Rumney feels that he should be honored and the committee agreed.

Adopted.

Ordered to third reading.

SB 238-FN, an act permitting the transportation of manufactured housing which is up to 16 feet wide. Transportation committee. Re-referred. Senator MacDonald for the committee.

SENATOR MACDONALD: I want you to know that I took the hardest one of all. This change should be done by rules. It would appear that the Commissioner of Transportation wasn't getting the message, but from what the sponsor said he has now received a message and will do it by rules. The thing is, is that you always keep some insurance, so interim study would give us some insurance that we need to make sure that it is done.

Committee report of re-referred is adopted.

ANNOUNCEMENTS

Senator Disnard (Rule #44): A lot of us get our picture in the Union Leader from time to time, but very few of us ever get our pictures in the Union Leader in color. And though a lot of people consider politics a sport, I never thought that I would see any one of us on the sports page. A week ago, like many of us, I opened up my Union Leader and guess who was there as usual? Junie Blaisdell. As many of you have read, Junie received one of the coveted Union Leader John Clark Official Sports Memorial Awards last week. He was only one, one of five officials in the entire state to receive this honor. The awards committee cited his 22 straight years of officiating in the state basketball tournament, including working in the finals at every level. Junie was also past President and member of the Executive committee of the New Hampshire Board of Referees Association and has more than 30 years experience as an official on the high school, prep school and college level. So I hope that the Senate, when it sees Senator Blaisdell, will add its congratulations to Junie for this award. I know that many of you have bought extra copies of that paper so that all of you can post pictures in your office. In the last few days, if I think that I need a referee, I know who I can call.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this

resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Thursday, February 11, 1993 at 1:00 p.m.

Adopted.

LATE SESSION
Third Reading and Final Passage

SB 7, an act changing the bonding requirement for mortgage brokers.

SB 13, an act extending the reporting date of the committee studying the effects of substance abuse on health care and economic costs to the state.

SB 18, an act increasing the amount of damage required to necessitate reporting a boating accident.

SB 20, an act relative to representation of business organizations in small claims court.

SB 22, an act relative to foreclosure notification waiver.

SB 25, relative to charitable gifts of life insurance.

SB 31, an act repealing sections referring to the loyalty oath requirement which was repealed last year.

SB 34-FN-LOCAL, an act including traumatic brain injury and autism in the definition of "educationally disabled child."

SB 48, an act relative to the children's trust fund.

SB 49, an act establishing a committee to study the feasibility of establishing a commercial shellfish and oyster aquaculture program.

SB 51, an act relative to the authority of land surveyors to enter upon land.

SB 59, an act relative to the privacy act.

SB 60, an act relative to solicitation of prostitutes.

SB 75, an act allowing a property tax exemption for solar-powered electricity.

SB 80, restricting the use of motorized craft on Goose Pond in Keene and Turee Pond in Bow.

SB 102, an act establishing a committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on the state and to study certain incentives and propose a state policy regarding the use of alternative transportation fuel vehicles.

SB 131, an act extending the reporting date for the committee studying gender equity in sports.

SB 147, an act requiring the legislative budget assistant to study the state restricted and dedicated funds.

SB 149-FN, an act relative to land surveying by proprietorships, corporations or partnerships.

SB 164-FN, an act relative to the OHRV fund.

SB 190-FN, an act naming the Route 25 rest area in the town of Rumney as the Nathan Clifford Memorial Rest Area.

HCR 11, relative to the Portsmouth Naval Shipyard.

Senator Disnard moved that the business of the day being completed, the Senate now adjourn until Thursday, February 11, 1993 at 1:00 p.m.

Adopted.

Adjournment.

RULES OF THE SENATE

1. Determination of quorum; correction of Journal.
2. Members, decorum of
3. Members, conduct when speaking
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same biennium.
10. Questions, when divided
11. Objections to reading paper, how determined.
12. Roll-Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.

17-A (a) Bills, deadlines for drafting.

17-b Bills, deadlines for information

17-c Final deadline

18. Resolutions to be treated as bills
19. Bills shall have three readings; progress of; time for second and third readings.
20. Bills, printing and distribution.
21. Bills amended only on second reading; filing of amendments.
22. Public hearings to be held and advertised.
23. Amended bills, printed distributed and disposed of.
24. Appropriating money, to whom referred.
25. President to sign bills, etc.
26. Committees, appointment of.
27. Standing Committees.
28. Messages sent to House.
29. Messages, when received.
30. Voting; division of Senate.
31. Visitors to Senate.
32. Hours of meeting.
33. Rules of Senate, how suspended.
34. Rules of Senate, how rescinded.
35. Committee of the whole.
36. President may name member to chair.
37. Senate staff; composition and duties.
38. Senate staff; days of employment.
39. Committees, reports and meetings
40. Appeal, presiding officer ruling.
41. Motions, no substitution under color of amendment.
42. Conflict of interest.
43. Committee of Conference reports
44. Personal privilege.
45. Requisition Approval Required.
46. Fiscal notes, requirements.

SENATE RULES

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected one week after the permanent journal copy is placed in the hands of the Senate.
2. No member shall hold conversation with another while a member is speaking in debate.
3. Every member, wishing to speak, shall address the President and when he has finished shall, if having risen to speak, then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate.
5. More than one member rising to speak at the same time, the President shall decide who shall speak first.
6. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order; in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.
9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment to the general appropriations (budget) bill. No motion to suspend this rule shall be permitted.
10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.
11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.
12. When the nays and yeas have been moved by a member and duly seconded by another member, each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both

members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.

13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.

14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side, nor unless the notice of such motion be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or on the next day on which the Senate shall be in session within one half hour after the convening of the early session, and any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.

14 (a) Reconsideration of any bills subject to a transfer date established by joint rules must be acted on or before the joint rule deadline, and thereafter shall be null and void.

15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.

16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.

17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.

17- A (a) No request by a member of the Senate for drafting a bill or a joint resolution, other than the general appropriations (budget) bill or the capital budget bill, shall be accepted by Legislative Services for processing unless the subject matter of the legislation has been filed with Legislative Services no later than Friday December 18, 1992.

(b) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless the complete information necessary for drafting such a bill or joint resolution is submitted to Legislative Services not later than 5:00 p.m. on Wednesday, December 30, 1992.

(c) Every Senate bill and joint resolution, other than the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 5:00 p.m., on Monday, January 11, 1993.

(d) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.

19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 20, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.

20. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.

21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.

22. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 5 days before hearing in the Senate Calendar.

(a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, re-refer to committee, inexpedient to legislate, or refer for interim study. Re-refer to committee shall be a committee report only in the first-year session; refer for interim study shall be a committee report only in the second year.

(b) If a bill is reported re-refer to committee, it shall read re-refer to committee for action in the second-year session. Bills which have been re-referred to the committee on Finance shall be referred by Finance to the original committee to which it was assigned when the senate adjourned from the first session. All re-referred bills shall be reported by the committee on or before the fifth legislative day of the second-year session.

23. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be laid upon the table and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.

24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Division on Finance for review. If any such bills have been referred jointly to the Division on Finance and another standing committee, the Division on Finance may report separately and a further public hearing may be held at the discretion of the Division on Finance. All bills appropriating money, which are referred directly to the Division on Finance shall have a hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.

25. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.

26. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.

27. The committees of the Senate shall be divided by 5 divisions. The Finance Division shall include The Finance Executive Committee, The Committee on Capital Budget, The Committee on Ways and Means, The Committee on Appropriations. The Economic Resource Division shall include The Committee on Economic Development, The Committee on Banks, The Committee on Insurance, The Committee on Transportation. The Environmental Resources Division shall include The Committee on Environment, The Committee on Wildlife and Recreation. The Government Operations Division shall include The Committee on Executive Departments and Administration, The Committee on Interstate Cooperation, The Committee on Judiciary, The Committee on Public Affairs, Senate Administration,(including the Committees on Rules and Resolutions, Journal, and Enrolled Bills). The Human Resources Division shall include The Committee on Public Institutions, Health and Human Services, and The Committee on Education.

28. Messages shall be sent to the House of Representatives by the Clerk of the Senate.
29. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.
30. All questions shall be put by the President, and each member of the Senate shall signify his assent or dissent by answering yea or nay. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.
31. No person except members of the executive, or members of the House of Representatives and its officers, shall be admitted to the floor of the Senate, except by the invitation of the President, or some member with his consent.
32. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.
33. No standing rule of the Senate shall be suspended unless two-thirds of the members present vote in favor thereof. This rule shall not apply to Senate Rule 9.
34. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present vote therefor.
35. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairman to preside in committee.
36. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.
37. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a door-keeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.
38. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.
39. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, redrafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he shall distribute this list to every member of the Senate as soon as it is prepared.
40. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.

41. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.
42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.
43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Nongermane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.
44. PERSONAL PRIVILEGE: A Senator may, as a matter of personal privilege, defend his position on a bill, his integrity, his record, or his conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.
45. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.
46. If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

February 11, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

The good news is that the Governor of New Hampshire wants to talk to you this afternoon. The bad news is that he wants to talk about money. Remember the words of boxing legend, Joe Lewis: "I don't like money actually, but it quiets my nerves". Many, many of the Governor's ideas quiet your nerves and may your response quiet his. Lord of budgets, taxes and appropriations, give to our Governor, House members and Senators the wisdom to spread our money as thoughtfully and effectively as a farmer spreads manure - and may good things grow because of their spreading. Amen

Senator Fraser led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

NOTICE OF RECONSIDERATION

Senator Currier moved reconsideration on SB 149, relative to land surveying by proprietorships, corporations or partnerships.

NOTICE OF RECONSIDERATION

Senator Colantuono moved reconsideration on SB 135, establishing a commission on conciliation and mediation.

HOUSE MESSAGE

The House of Representatives is ready to meet with the Honorable Senate in Joint Convention for the purpose of hearing the message on the budget by his Excellency the Governor, the honorable Stephen Merrill.

RESOLUTION

Senator Delahunty moved that be it Resolved, to meet in Joint Convention for the purpose of hearing the message on the budget by his Excellency the Governor, the honorable Stephen Merrill.

Adopted.

Recess for Joint Convention.

Out of recess.

COMMITTEE REPORTS

SB 212-FN-A, an act establishing a housing security guarantee program and continually appropriating a special fund. Banks committee. Ought to Pass. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, I had opened the public hearing on SB 212 before the committee realized that this bill more appropriately belonged to Economic Development. In order to get the bill in to Economic Development we went into Executive Session and we reported the bill out as ought to pass and after the appropriate action by the Senate body, we would appreciate it if this bill was sent to Economic Development.

Adopted.

Referred to the Economic Development committee (Rule #24).

SB 78, an act requiring that student records of transferring students be provided upon request. Education committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: Mr. President and Senate members, SB 78 is a piece of legislation that was requested by the Department of Education. Upon request from a private school and school district and upon proper authorization, student records shall be furnished without charge. The purpose of the bill is to expedite the transfer of a student from one educational institution to another. Records and/or transcripts are needed for evaluation and review prior to admittance. Further, this bill would insure a relatively smooth transition with every consideration given to the student. The committee recommended that the bill be ought to pass.

Adopted.

Ordered to third reading.

SB 93-FN-A, an act relative to the National Science Foundation's statewide systemic initiatives program and making an appropriation therefor. Education committee. Ought to Pass. Senator McLane for the committee.

Recess.

Out of recess.

SENATOR MCLANE: The Governor has promised to put this program in his budget at a $300,000 level. The money will be used to support a grant to the Science and Mathematics program, The National Science Foundation. We were in the finals last year for a $10 million grant and because we had not put in any state financial support, we were turned down. All of the other New England states have already received this money. It would be a matching grant for the $300,000 of $10 million in federal money and almost $8 million in in-kind support for the promotion of the teaching of mathematics and science. It is an important grant and I am pleased with the committees recommendation.

Referred to the Division on Finance (Rule #24).

SB 148-FN, an act making appropriations nonlapsing for regional vocational education tuition and transportation. Education committee. Ought to Pass with Amendment. Senator Podles for the committee.

1372B

Amendment to SB 148-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

making appropriations nonlapsing for regional vocational education tuition and transportation, and allowing the Kearsarge regional school district to hold its 1994 and 1995 annual meetings in such places as the officers deem appropriate.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3.

2 Kearsarge Regional School District. Notwithstanding the provisions of RSA 197:4, the Kearsarge regional school district may conduct the 1994 and 1995 annual meetings in such suitable places as the opinion of the officers will best accommodate the voters. Audio communication systems between all meeting places shall be continuously available and the voters at all meeting places shall have the opportunity to participate in the district meeting in a manner satisfactory to the officers calling the meeting.

AMENDED ANALYSIS

This bill provides that appropriations for regional vocational education tuition and transportation shall be nonlapsing, and it allows the Kearsarge regional school district to hold its 1994 and 1995 annual meetings in such places as the officers deem appropriate with audio communication systems between all meeting places.

SENATOR PODLES: Mr. President, SB 148 makes appropriations nonlapsing for Regional Vocational Education Tuition and Transportation. These are already appropriated funds and it doesn't hurt anyone and it doesn't cost anything. The amendment on page three in the calendar is enabling legislation specifically for the Kearsarge school district. They

had difficulties in the recent years fitting all of the voters who want to participate in the school budget meeting into one place. The largest building that they have to hold the meetings does not nearly have adequate facilities to accomodate the large numbers of residents that have been turning out. This amendment would provide a two year test period in which the Kearsage district would be allowed to provide a two way telephone communications whereby those voters attending one of the satellite locations would be given the same opportunity to speak as those attending the main location as well as being able to hear all other activity. I want to emphasize again, it is enabling legislation. The committee recommends ought to pass with amendment.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 37, an act adding and redefining terms relative to the New Hampshire pharmacy board. Executive Departments & Administration committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1349B

Amendment to SB 37

Amend the bill by replacing section 1 with the following:

1 New Paragraph; "Compounding" Defined. Amend RSA 318:1 by inserting after paragraph III the following new paragraph:

III-a. "Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug or device as a result of a practitioner's prescription drug order or initiative based on the pharmacist-patient-prescriber relationship in the course of professional practice or, for the purpose of, or as an incident to research, teaching, or chemical analysis, but not selling or dispensing. "Compounding" also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns. The compound drug product shall bear the label of the pharmacy responsible for compounding and dispensing the product directly to the patient for administration, and the prescription shall be filed at that pharmacy.

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect upon its passage.

SENATOR FRASER: Mr. President, the two changes in the current law reported under 318: The first one adds III-a to the definition of medicine which now describes compounding. In the body of the bill there was a typo on line 13, the word should have been, "filed", and not, "filled" and that is what you see in the amendment. Part two of SB 37 has to do with the description of manufacturing of drugs and that is fairly clear as to what it is about. That is all new language, Mr. President. That was reported unanimously, as ought to pass by the committee.

Amendment adopted.

Ordered to third reading.

SB 42, an act revising the committee studying a statewide trauma care system and extending the completion date for the committee's work. Executive Departments & Administration committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill expands the study committee membership because of the fact that last year the Trauma study committee, through the State Department of Public Health, applied for a grant to help with this Trauma study and part of the suggestion was to expand the study committee to include various other segments of the medical community to this broad study committee, including people from the state police, New Hampshire Family Practice, The Pediatrics Association, Emergency Medical Technicians Association, The Paramedic Association and so forth. It also extends the reporting deadline from November of 1992 to 1993 respectively for each of the two sessions. We urge your support.

Adopted.

Ordered to third reading.

SB 155, an act relative to the creation of a bi-state commission for economic security. Interstate Cooperation committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: Municipalities from both sides of the Piscataqua River have longed shared one common economy. Our economic fates are tied together by factors including, but certainly not limited to the Portsmouth Naval Ship Yard. A bill similar to this one is progressing through the legislature in the state of Maine. This bill creates a new tool by which community leaders on both sides of the river may examine and evaluate factors affecting our communities and may then make recommendations for actions to enhance and improve the economic stability of the region. This bill helps our region take control of our own economic destiny. I concur with the committee report which is ought to pass.

Adopted.

Referred to the Economic Development committee (Rule #24).

SB 23, an act increasing the maximum amount in controversy for a small claims action. Judiciary committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Judiciary would ask inexpedient on this legislation. We totally agree with the sponsor of this legislation that there is a problem in the amount of money that should be changed. But unfortunately, that would create a bigger disparity right now and it would be unconstitutional. There will be a resolution coming forward at a later date to try and help address the problem.

Committee report of inexpedient to legislate is adopted.

SB 26, an act relative to a waiting period before a public adjuster may approach a potential client. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1440B

Amendment to SB 26

Amend the title of the bill by replacing it with the following:

AN ACT

relative to contracts between public adjusters and insureds.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Contracts with Public Adjusters. Amend RSA 402-D:5 by inserting after paragraph II the following new paragraph:

II-a. Any contract for services entered into between a public adjuster and an insured shall contain a provision, which shall be prominently made a part of the contract and which shall state, in substance: "You have the right, at your option, to rescind this contract at any time within 2 business days after the end of the day you sign it. Should you wish to discuss this matter with the New Hampshire insurance department, it maintains a service division to investigate complaints and can be reached, toll-free, by dialing 1-800-852-3416."

2 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill requires public adjusters to include a statement in their contracts with insureds, which states that the insured has 2 business days to cancel the contract and may file complaints with the insurance department by calling a toll-free number.

SENATOR COLANTUONO: This bill was a request of the Insurance Department. It was intended to address the perceived problem of having public adjusters come on to fire scenes and other areas of insurance losses where they protect or try to work for the interest of the insured party and signing the party up right at the scene. The Insurance Department felt that there should be a right of rescission for 48 hours. The Insurance Department also wanted to keep the adjuster away for 24 hours. The committee didn't feel that was appropriate, but they did feel that the first suggestion was appropriate. We reworded the language of the rescission right and that appears in the amendment on page four of the calendar. We request that you vote affirmatively for the amendment and then ought to pass on the bill.

Amendment adopted.

Ordered to third reading.

SB 50, an act extending the report date and adding additional members to the law enforcement and prosecutor task force. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1446B

Amendment to SB 50

Amend 1992, 110:2 as inserted by section 1 of the bill by inserting after paragraph XVII the following new paragraph:

XVIII. Two members from the youth development center, appointed by the governor.

SENATOR COLANTUONO: This is a very simple bill. It extends the study committee on law enforcement and prosecutors for one year. The amendment is to add two members from the youth development center who were left off of the committee originally. That is on page five. The committee would request affirmative vote on the amendment and then ought to pass on the bill.

Amendment adopted.

Ordered to third reading.

SB 81, an act creating a task force to coordinate resources addressing sexual assault and sexual harassment at postsecondary institutions. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1441B

Amendment to SB 81

Amend the bill by replacing section 1 with the following:

1 Task Force Established; Membership. There is established the task force on sexual assault and sexual harassment at postsecondary institutions. The task force shall be composed of the following members:

I. Two members of the house of representatives, one of whom is a member of the house judiciary committee, appointed by the speaker of the house.

II. Two members of the senate, one of whom is a member of the senate judiciary committee, appointed by the senate president.

III. One member appointed by the New Hampshire Association of Police Chiefs, who has been active on the College Town Police Chiefs Committee.

IV. Three members, or their designees, appointed by the New Hampshire College and University Council (NHCUC), who are providers of services to sexual assault survivors on their respective campuses.

V. Three members, or their designees, appointed by the New Hampshire College and University Council (NHCUC) who are directors of security or safety on their respective campuses.

VI. Three members, or their designees, appointed by the New Hampshire College and University Council (NHCUC) who are the deans of students on their respective campuses.

VII. One county attorney appointed by the New Hampshire Municipal Association.

VIII. The commissioner of postsecondary education, or designee.

IX. The director of police standards and training, or designee.

X. The director of the victim/witness assistance office of the department of justice or a designee.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to ask ought to pass with amendment. The amendment can be found on page five of the calendar. It merely adds additional members to the task force. The task force is to coordinate and address sexual assault or sexual harassment at postsecondary institutions.

Amendment adopted.

Ordered to third reading.

SB 110, an act establishing the crime of stalking. Judiciary committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The Judiciary committee would like to ask inexpedient to legislate on this bill and then we would ask you to vote on the upcoming motion to table. Excuse me, we will move to table first. I will tell you the reason. The committee recognizes the hard work of the sponsors, but we also recognize that there is a bill coming over from the House that addressess the same problem. It seems that the committee has worked diligently over the summer and seems to address the problem with a great deal more detail. So we would ask you take the second motion of tabling.

Senator Fraser moved to have SB 110 an act establishing the crime of stalking, laid on the table.

Adopted.

LAID ON THE TABLE

SB 110, an act establishing the crime of stalking.

SB 112, an act prohibiting a defendant in a sexual assault case from bringing certain civil actions against the victim. Judiciary committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

MOTION TO RECOMMIT

Senator Hollingworth moved to have SB 112, an act prohibiting a defendant in a sexual assault case from bringing certain civil actions against the victim recommitted to the Judiciary committee.

Adopted.

SB 112 is recommitted.

SB 113, an act establishing a committee to study presumptive sentencing. Judiciary committee. Inexpedient to Legislate. Senator Cohen for the committee.

SENATOR COHEN: The committee on Judiciary, while studying this bill, determine that in light of the fact that the federal courts are now regularly rejecting the notion of presumptive sentencing, we felt that there was no particular need for this study committee. We recommend a vote of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 19, an act establishing a right to work act which provides for freedom of choice on whether to join a labor organization. Public Affairs committee. Inexpedient to Legislate. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, we had quite a long, lengthy hearing. There were some 20 odd people at the hearing against the issue. One person spoke for this particular piece of legislation. The committee decided that this piece of legislation was not needed at this time.

SENATOR COLANTUONO: Senator Roberge, was there any testimony at the hearing that recently any person in New Hampshire has lost their job because of the lack of this bill?

SENATOR ROBERGE: No, there wasn't.

SENATOR COLANTUONO: Is there anything in this bill that says if a person chooses not to be a member of the union involved, that they also then therefore do not get the benefits of the union contract? Is that in this bill?

SENATOR ROBERGE: I don't think so. I would have to look it over again.

Question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Barnes.

Seconded by Senator Delahunty.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Fraser, Currier, Disnard, Roberge, Blaisdell, Baldizar, Pignatelli, Colantuono, McLane, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Lovejoy, Wheeler, Podles, Barnes.

Yeas: 19 - Nays: 4

Committee report of inexpedient to legislate is adopted.

SB 27, an act establishing a committee to study the apportionment of county taxes. Public Affairs committee. Ought to Pass with Amendment. Senator Barnes for the committee.

1151B

Amendment to SB 27

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 Compensation and Mileage. Members of the committee shall not be compensated; however, legislative members shall receive mileage at the legislative rate.

1369B

Amendment to SB 27

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the committee shall be appointed so that each county shall be represented by at least one member. The 12 members of the committee shall be as follows:

(a) Two county delegation chairpersons, appointed by the speaker of the house.

(b) Two members of the senate, appointed by the president of the senate.

(c) Two county commissioners, appointed by the New Hampshire Association of Counties.

(d) Two elected county officers, appointed by the New Hampshire Association of Counties.

(e) Two citizens familiar with county government, appointed by the governor.

(f) Two members of local government, one representing a city and one representing a town, appointed by the governor.

SENATOR BARNES: Mr. President and members of the Senate, SB 27, all that it does is establish a committee to study the existing tax structures in the New Hampshire counties. It has been brought to my attention and a few other folks that some of the counties would like this to be done. There was an amendment added to this bill. The amendment is in front of everyone in the calendar. If you look at the amendment, number one, it says, "the members of the committee shall be appointed so that each county shall be represented by at least one member, the 12 members of the committee shall be as follows", it breaks it down, everything is the same except when you come to the letter, f; the letter f has, "two members of local government, one representing a city and one representing a town appointed by the Governor. The rest of the amendment puts in a section that was left off of the original bill. It is number four, concerning compensation and mileage, "the members of the committee shall not be compensated, however, legislative members shall receive mileage at the legislative rate". The committee voted this out six to zero. I move that the Senate pass this bill.

Amendments adopted.

Ordered to third reading.

SB 28, an act establishing a committee to study the problem of conflict of interest regarding town officials. Public Affairs committee. Inexpedient to Legislate. Senator Barnes for the committee.

SENATOR BARNES: Mr. President and members of the Senate, on SB 28 we were fortunate to have two members on the committee that made a recommendation to the sponsor and the co-sponsor and the recommendation was that it should be on the local ballot during the town meeting of this coming year. The sponsor and the co-sponsor agreed with this and we would like to report this out as inexpedient to legislate and we hope that we have your support on that.

Committee report of inexpedient to legislate is adopted.

SB 74, an act changing the name of Civil Rights Day to Martin Luther King, Jr. Civil Rights Day. Public Affairs committee. Split Vote - Inexpedient to Legislate. Senator Lovejoy for the committee. Split Vote - Ought to Pass. Senator J. King for the committee.

SENATOR LOVEJOY: I have been asked to report on SB 74 for those of us who voted against this bill in committee. This vote does not represent a vote against Martin Luther King, but rather a vote to honor all of those who have played a part in the struggle for civil rights, there were many. From that courageous lady, Rosa Parks, who refused to give up her seat on the bus and therefore gave birth to the movement that Doctor King heathered. So has my ancestor, disparity Parish Lovejoy who was the first to give his life, in November 156 years ago, on the docks of Alton, Illinois for speaking out then for human rights. So did Abraham Lincoln, the great emancipator who also lost his life while he held a nation together, not half slave and half free, but as one nation for all men and all women who can enjoy their God-given rights. I offered an amendment to the committee to so honor President Lincoln for his part in this nations struggle for human rights and it was defeated. Now the brave men and women throughout our history, black and white, native Americans and orientals who have acted and who have fought, who have given their lives, their time and their fortunes, in the belief that unless all men are free, not one of us is free at all, it must also be honored. So we speak out with our vote to honor all of those who have worked for civil rights in this nation. We believe that the compromise worked out in the last session and to which this Senate concurred is good and proper and so we should leave it alone. Mr. President, in the entire history of mankind, we in this state choose to honor just four people by name. Two of them prior to when our nation was founded and two since our nation was founded. The first, we celebrate Christmas in honor, or in celebration of the birthday of Jesus Christ who we do not even allow in our schools. We celebrate Columbus Day, whose legacy now is being questioned. The two that we celebrate since our nation was founded in our entire history is that of George Washington, the founder of our nation and now if this bill passes, Doctor Martin Luther King. Thank you for letting me present this report.

SENATOR J. KING: I rise in support of SB 74. I am happy to present to you SB 74 and I seek your support in endorsing this legislation. Renaming our Civil Rights Day that we presently have to Martin Luther King Civil Rights Day. It is extremely fitting that Martin Luther King be added

to the name of the holiday because when most people think of civil rights, who do they think of? Martin Luther King, especially today. He provided hope and courage and leadership to provide that all rights guaranteed by our constitution are for all citizens of these United States regardless of race, creed, color or sex. He showed one person dedicated to the rights of all persons can make a difference. The results of his work have already left their mark and I am sure that his mark will make these United States, and the world, a much more democratic place to live in in each upcoming year. Hopefully, we can reach that ultimate goal when all in the United States and the world can say, 'really free at last'. Let us hope that Martin Luther King holiday will be the day when citizens worldwide, reaccess and confirm our liberties, our rights, and our responsibilities. Martin Luther King has given the real meaning of the phrase, "Rights of People". New Hampshires first piece of legislation relative to a Martin Luther King holiday was submitted in 1979. Fourteen years later, we still do not have that legislation with Martin Luther Kings' name on it. We are the only state in the union at the present time. Let us join together today and pass this bill and make this a holiday observed by all 50 states. It is the right thing to do. Thank you very much.

SENATOR LAMIRANDE: Mr. President and honorable members of the Senate, "Five score years ago, a great American, in whose symbolic shadow we stand today, signed the emancipation proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of whithering injustice. It came as a joyous daybreak to end the long night of their captivity."

SENATOR W. KING: "So we have come here today to dramatize a shameful condition. In a sense we have come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American would fall heir. This note was the promise that all men, yes, black men as well as white men, would be guaranteed the inalienable rights of life, liberty and the pursuit of happiness."

SENATOR FRASER: "But there is something that I must say to my people who stand on the warm threshold which leads into the palace of justice. In the process of gaining our rightful place we must not be guilty of wrongful deeds. Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred. We must forever conduct our struggle on the high plain of dignity and discipline. We must not allow our creative protest to degenerate into physical violence. Again and again, we must rise to the majestic heights of meeting physical force with soul force."

SENATOR BLAISDELL: "I have a dream that one day on the red hills of Georgia, sons of former slaves and sons of former slave owners will be able to sit down together at the table of brotherhood."

SENATOR BALDIZAR: "Go back to Mississippi; go back to Alabama; go back to South Carolina; go back to Georgia; go back to Louisiana; go back to the slums and ghettos of the northern cities, knowing that somehow this situation can, and will be changed. Let us not wallow in the valley of despair."

SENATOR COHEN: "I am not unmindful that some of you have come here out of excessive trials and tribulations. Some of you have come fresh from narrow jail cells. Some of you have come from areas where your quest for freedom left you battered by the storms of persecution and staggered by the winds of police brutality. You have been the veterans of creative suffering. Continue to work with the faith that unearned suffering is redemptive."

SENATOR PIGNATELLI: "This is our hope. This is the faith that I go back to the South with. With this faith we will be able to hear out of the mountain of despair a stone of hope. With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith, we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day. This will be the day when all of God's children will be able to sing with new meaning, My country, tis of thee, sweet land of liberty; of thee I sing. Land where my fathers died, land of the pilgrim's pride, from every mountainside, let freedom ring. And if America is to be a great nation, this must become true."

SENATOR MCLANE: "So let freedom ring from the prodigious hilltops of New Hampshire. Let freedom ring from the mighty mountains of New York. Let freedom ring from the heightening Alleghenies of Pennsylvania. Let freedom ring from the snow capped Rockies of Colorado. Let freedom ring from that curvaceous slope of California, but not only that. Let freedom ring from Stone Mountain of Georgia. Let freedom ring from Lookout Mountain of Tennessee. Let freedom ring from every hill and molehill from Mississippi, from every mountain side, let freedom ring."

SENATOR J. KING: "And when we allow freedom to ring, when we let it ring from every village and hamlet and from every state and city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Catholics and Protestants, will be able to join hands and to sing in the words of the old negro spiritual," "Free at last, free at last, thank God Almighty, we are free at last".

Question is on the motion of ought to pass.

Adopted.

Referred to the Division on Finance (Rule #24).

Senators Barnes, Roberge & Wheeler in opposition to SB 74.

SB 103, an act relative to the construction of exit 10 on the Spaulding turnpike. Transportation committee. Ought to pass. Senator Currier for the committee.

SENATOR CURRIER: This bill requires that the commissioner of the Department of Transportation expedite construction of exit 10 on the Spaulding Turnpike.

SENATOR LOVEJOY: The proposed exit 10 is in district six, but more important than that, it is to point out the need for this project to continue. When the Spaulding Turnpike was originally constructed, exit 10 was not built, it was provided for, but it was not built. It was held for a long time, making Somersworth our only city along this vital highway corridor without a direct access egress. Because, Mr. President, of the significant growth in the north end of Dover in the city of Somersworth, and the Southern portion of Rochester, this exit is badly needed. This project along with what is now known as the 108 corridor, was started nine years

ago in 1984 and it was introduced then by Senator Leo Lessard and Ed Dupont. This is the sixth piece of legislation that has been submitted on this project. In 1991 SB 38 was adopted and it provided $1.1 million to fund the impact of the interchange. It was made a priority and the city of Somersworth was authorized to investigate alternatives for a connector road to exit 10. In 1992 SB 446-a increased that funding to $3 million. Now this new legislation would direct the commissioner to proceed with the engineering and the environmental assessment, apart and separate from the east-west study, and it directs that study to include the connector road from the turnpike to route 108. Now the commercial growth that has taken place along the routes leading to and from what is known as Weeks Traffic Circle and the significant amount of industrial land in Somersworth and in Rochester, mean that we need better highway access. The proposed improvements to Weeks Circle, which includes a new signalized intersection, will be significantly impacted unless this exit is constructed. Also Somersworth still remains as the only community adjacent to the Spaulding Turnpike that does not have a direct access through a turnpike exchange. Thank you.

SENATOR DISNARD: I notice that Senator Lovejoy stands alone in this bill. However, I see that we have two other senators on the next bill. I am wondering if there is going to be a big fist fight. If you look on line 10 of the bill just presented, "shall have the highest priority", the next bill, "shall have the highest priority", and I am just wondering if the Senate wishes to get into a fight and see all of these gentlemen get into a fist fight. I wish to have the members vote down the bill or table the bill if they so desire to get that language out of there. In my area, Senate district eight, I am as proud as you people are of your Senate districts and some of the projects in my area have been postponed, moved down if you want to call it down, meaning that they got the business, because other bills have had the highest priority. Now does that mean that I come in with an amendment next week on another bill, and with all of my bridges and roads have the highest priority? Senator Hough, you will want your bridge up at the Ledges to have the highest priority? How realistic is that? That is foolish. I think that they should table the bill and get together and take that out or Senators, vote this down.

SENATOR CURRIER: I rise to speak in favor. What is the laughter? Yes, I rise to support the motion of ought to pass and defend the committees decision. With all due respect to my colleague to the left and my colleague to the right. The situation is different in that one bill is referring to one particular statute in terms of priorities and the other bill you referred to is talking about another completely different statute. Part of the problem is that if people who are concerned about their districts don't do things in a constructive way with regard to priorities, everything else seems to fall to the back of the bus, so to speak. With the budget shortfalls being what they are today, we are finding that the new 10 year highway plan which has been circulating for the last four or five weeks has put some projects to the back of the bus to the point where they won't be heard from until the year 2000 or 2001. Some of us have been waiting much longer or as long as other projects and this Senator, is looking to get support for the construction of the project in his district, because for some reason, the big metropolitan areas seem to be getting a lot of attention and, quite frankly, some of us in the north country and the not so north country need to be watching and getting some attention here. The commissioner of the Department of Transportation has taken a little inter-

pretation of the 10 year highway plan in that terminology for the highest priority to the point where it has devoted or put the largest amount of dollars into the completion of the 101 bypass. I have no problem with completing the 101 bypass. I do have a problem with converting all of the dollars to all of the other projects that are in all of the other districts of the state, and putting all of our eggs into one basket. I think that is absolutely absurd and wrong, and that is why I have sponsored the bill that we will be debating in a couple of minutes. When we are talking about economic development and the Pease redevelopment authority and the growth of the seacoast area, this exit is important to that district, and I think that we need to be paying attention to that. We have to be looking at a total picture here, Senator Disnard, and not just the parochial look at what we are doing in individual bills.

SENATOR COLANTUONO: I moved to New Hampshire in 1976, I moved to the city of Nashua and I bought a map of the area. I opened up the map and I saw the Everett Turnpike going through the city and then I saw this dotted line going around the city and it was suppose to be something called the 'Circumferential Highway' and that highway was suppose to be built in a short time and be available for the many of thousands of residents of the greater Nashua area. To this date, that highway is still on the drawing board. Now I don't mind that the legislature passed language to give route 101 the highest priority because, I think, that in the overall scheme of things, it deserved it. That was the greatest need that we had. But under the next bill that we are going to be talking about, if that passes, once that 101 road is done, then all of the money in the Transportation budget that is necessary, will go up to the Hillsborough bypass and that leaves the Circumferential Highway, and the Manchester airport road, and Senator Lovejoy's project and every other project to having to wait longer. So, I think, that all of these bills should not pass if the objection is that we originally gave this highest possible priority language to route 101, well let us change that and get some of the money spread back around. But let us not try and add each of our own individual projects with this kind of language, and it is just a question of who gets their bill in first and who has the most clout here in the legislature, that is wrong. At least for Senator Lovejoy's project, they have a highway, they might not have all of the exits that they want, but I would like to get just the highway in our area. I would urge that both of these bills be killed.

SENATOR CURRIER: When I moved to this state in 1968, that same dotted line was on that same map, I believe. We were probably looking at the same map.

SENATOR COLANTUONO: Thanks for helping my argument.

SENATOR CURRIER: My question is, where is the Circumferential Highway on the 10 year plan? It hasn't been moved to the year 2000 and it is right where it is suppose to be, right in the plan, isn't it?

SENATOR COLANTUONO: It should have the highest priority after 101.

SENATOR CURRIER: That is a matter of opinion. But where is it in the plan? It hasn't been shifted, has it?

SENATOR COLANTUONO: Well, I don't . . . if we are speaking about SB 103, I am not really sure of the answer as to where it stands in relationship to exit 10, all that I know is that the Spaulding Turnpike is built and the Circumferential Highway is not built.

SENATOR CURRIER: That is true.

SENATOR MCDONALD: This is probably a 'do you believe question' to Senator Disnard. If you hold a hearing on a bill and you have a great many people come in a great distance to talk about a bill, say like Hillsborough, and say there is nobody there to oppose the bill and you know that a great many years ago, they built a bypass around the town of Henniker and they left a beautiful highway stop almost at the main street of Hillsborough, would you listen to those people and understand what they were talking about and try to help them? Basically, I think, what the Senate is doing on the bills, they are saying to the Department of Transportation, that we want attention, we want you to come in and tell us where this project it. If this bill said that we are going to swap Henniker for Hampton, which I think in the 10-year plan book, you should be required to do. If you are going to change one project and move it down, you should pick a project on your bill to do it, I think that these bills are basically the type of bills that are trying to get attention to the Department of Transportation and all three bills we have, got attention. We have found out that they are doing something for all of these people. But how do you refuse a town like Henniker, Somersworth and Dover when they come in and nobody was there to oppose the bill, how do you handle that? Don't you wait and pass it on to the next committee where you have to show where the money is coming from and do it the right way? You can't, you listened to the evidence, you can't tell these people that you are wrong because they all have a good case. How do you handle that?

SENATOR DISNARD: Sir, before you sit down, I know that tonight I can go home and rent 10 school buses and if the criteria is turning a lot of people down and then you get a favorable bill passed, I would like to put an amendment on the next bill that is in your committee and bring 10 school buses full of adults down if that is the criteria. I believe, that people out there and almost everybody here, did not know that these two bills were coming in or were being presented with the highest priority.

SENATOR MCDONALD: Thank you.

SENATOR BALDIZAR: Senator Disnard, would you believe that monies were doled out last year in the Economic Development committee and in that budget for some of the projects that went statewide and it went to Manchester and it went to Berlin and it went to Portsmouth and areas across the state? And would you believe that I was not in the Senate at that time, nor was my colleague from Nashua? And would you believe, that I believe, that monies should be given out to communities where the need is the greatest? We shouldn't be whoever is the fastest talker or the smartest bill drafter or bill crafter. We need to put our dollars where it will do the most good. I think that the monies should be dispensed on need and not given to those who repeatedly have received some, because some communities have gotten none, and I am from one of those communities that have gotten none.

SENATOR DISNARD: Yes, Senator, I do believe what you said, that you do believe.

SENATOR BALDIZAR: Thank you, Senator.

SENATOR DISNARD: I have no problem if the bridge or these exits have the highest priority because of danger or because we need adequate passage for a lot of vehicles, I agree with that. But I also agree, and I am happy to hear that you might vote with me. Thank you.

SENATOR HOLLINGWORTH: I only rise because I think that the problem that we are all getting into is the term on these two bills of highest

priority. I am concerned when I look at 166 and it has the Hillsborough construction bypass and the construction of the New Hampshires route 101. Because the way, if you were to interpret that, you look at it and it looks like you could say that Hillsborough is over 101 but I have faith and I have faith in this body, and I have faith that this is going to go before Capital Budget. And that these, the highest priority really is not going to be decided by the way that these two bills pass and with that language, because when it is heard in Capital Budget, I am sure that all of us will be in there making sure that what comes out of Capital Budget for projects and Transportation will address need first. I think that will be how it will be handled and I thank the Transportion committee for their ought to pass on both of these, because I think that they are both worthwhile projects and the merits in it, just as we do in Finance and we do in Appropriations, will be determined on the financial ability to pay for those projects and when we can have them in Capital Budget.

SENATOR BLAISDELL: Mr. President and members of the Senate, I think that Senator MacDonald and especially Senator Hollingworth have said it well. We have a process that we go through. You pointed out that the need is there. Everyone of us in this room has a need in our district. I think that the message that we try to send here, I will support both of these bills, because the message that we are trying to send, not only to the Governors Council or anyone else, or the DOT, but we are trying to send to the federal goverment a message that we all have some very serious problems in our districts and we need that money to be funneled back. The process is there, Senator Hollingworth, you just explained it. It will go down to Capital Budget with Senator Shaheen and whatever words have to be changed can be changed, but that is our process here. I will defend any Senator that stands on this floor and tries to speak for their district. You know the needs of your district better than anyone else, so again, I will support the bills. I think that the process should go on, and it will go to Capital Budget, but again, Senator MacDonald, I think that you said it well.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 166, an act giving highest priority to a project in Hillsborough as part of the 10-year highway construction and reconstruction plan. Transportation committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill was heard in the Senate Transportation committee yesterday. There were a large contingent of people from Hillsborough they're concerned basically about one thing, the fact that from the planning standpoint in that community, there are a lot of people who don't know because the project is scheduled for 1995, as to where the actual corridor is or where it may be. It is down to three possibilities. People are trying to make decisions about improvements on their homes that are within those three corridors and until such times that the corridor is selected, those people are really in kind of a limbo. I sponsored this bill because of my amazement that the new 10-year plan that was submitted to the Highway Advisory committee a couple of weeks ago, had changed the actual matrix in regard to this and numerous other bills and put the construction of the actual project to the year 2000 and 2001. It was scheduled originally for 1995 and 1996. One of the things that is disturbing is the fact that when the process has begun and you think that you know where you are at, you get thrown a curve when they keep

shifting the priorities. I don't have any pride of offership in terms of this bill with regard to the highest priority, because all that I basically asked Legislative Services in drafting this bill was to draft a bill that would actually give Hillsborough the same priority that it has today, prior to the acceptance of the new 10-year highway plan. It was Legislative Services that felt that the only way to do that was by giving it the highest priority. I am a little concerned about that terminology myself, because it is that highest priority, that allegedly has caused the Chairman or the Commissioner of Transportation to put all of his eggs into the 101 bypass. I understand, and the Department of Transportation calls it, 'Ice tea', and I am not sure what the hell that really means, but it is all of the new highway monies that we are getting from the federal government. We are getting more money now than we ever have and so I don't understand really what is going on, but I will by the end of this session with regard to this new 10-year plan. Before I leave office, the Hillsborough bypass is going to be constructed, I would hope. I hope that I don't have to stay in office forever, like my predecessor. The road as many of you know it, because it is the only east-west route to route 91 and going south, the only stretch of road that isn't under construction is that section of road which is about six miles long going through the town of Hillsborough. The town of Hillsborough constructed a traffic light in the center of town to help congestion downtown with all of the truck traffic and to slow down the traffic that was going through the residential and business section of that community at a large cost to them. This bypass would eliminate some of those problems that exit there and the construction of the Granite Lake bypass, so called, which goes around Granite Lake has begun construction, they have already started cutting the trees there, so that the Hillsborough bottleneck is the only bottleneck that effects any commuter or truck traffic going from Concord to Brattleboro Vermont. I think that we should finally get a project that is completed around here. I don't like to refer to the state of Massachusetts very often, but as long as I lived there, they were working on route 128. I would like to see something actually completed here in the state of New Hampshire, and by supporting this measure to get the Hillsborough bypass, and as I say, this bill going to Capital Budget, I would work with the Capital Budget committee to try to get it so that people aren't concerned about this highest priority, but that highest priority was something that came out of Legislative Service, not this guy. Thank you very much, Mr. President.

Adopted.

Referred to the Division of Finance (Rule #24).

SB 178-FN, an act allowing the state to acquire rail properties for other transportation purposes, including recreational trails. Transportation committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: Mr. President and members of the Senate, this bill has no high priority listed on it where it doesn't need it. The bill authorizes the Commissioner with the approval of the Governor and Council to acquire rail properties by purchase or condemnation with further authority to sell or lease the property. There is a whole procedure in place now that railroads have to go through when they abandon property. It is not until they negotiate a purchase and sales agreement that the right of first refusal by the Department of Transportation of the state of New Hampshire can come into play. Presently the only thing that the Department of Transportation can consider now is purchasing these trails

for further railroad service. With this bill, they could also consider purchasing these trails for recreational purposes. The bill is necessary to insure continued rail service in New Hampshire and to insure continuous corridors including recreational trails. The committee voted in favor of the bill and that it ought to pass.

Referred to the Division on Finance (Rule #24).

SB 144-FN-A, an act relative to the legacies and successions tax on property jointly owned. Ways and Means committee. Re-referred to committee. Senator Russman for the committee.

SENATOR RUSSMAN: The testimony by the prime sponsor was the request that the bill be re-referred to the Ways and Means committee for additional information and study. So we would ask that the same be done.

Committee report of re-referred is adopted.

SB 204, an act requiring certain hunters to wear hunter orange. Wildlife & Recreation committee. Split Vote - Ought to Pass with Amendment. Senator Cohen for the committee. Split Vote - Inexpedient to Legislate. Senator Disnard for the committee.

1414B

Amendment to SB 204

Amend RSA 207:38-b, I as inserted by section 1 of the bill by replacing it with the following:

I. Any person hunting during any firearm season for deer, except a person engaged in the taking of migratory waterfowl, shall wear at least one article consisting of a hat, cap, vest, coat, pants, sweatshirt, shirt, or sweater, or other outer garment in the color of solid, fluorescent hunter orange visible from all sides. Camouflage hunter orange clothing with at least 50 percent solid orange pattern visible shall be allowed. Hunter orange gloves do not meet this requirement. "Hunter orange" means a daylight fluorescent orange color with a dominant wave length between 595 and 605 nanometers, an excitation purity of not less than 85 percent, and a luminesce factor of not less than 40 percent.

SENATOR DISNARD: I am reporting out for the three people on the committee who voted inexpedient to legislate. I was amazed to hear the testimony of the people opposing hunter orange. Those speaking in favor where the two sponsors and two other people who were sponsors said that they also supported that. The Fish and Game staff, a New Hampshire Wildlife Federation of Lobbyist who said that it was a very close vote. Someone sent a letter from a Sunset Fish and Game Club, which I am not that familiar with, and then an individual said that an attorney representing a certain county had to leave, but that all of the county attorneys were in favor of it. Now just stop and think, the state organization was in favor of it; however, in further testimony, the vote of the commissioners, who to me set the policy, was a 5 to 5 vote, so therefore, I don't see how a letter could be forthcoming from the Fish and Game Director, saying that the department was in favor of this. It was also interesting to note that a man who owned 70 acres said that he would have to go out, if this is passed, with hunter orange, with my gun. I walk back to my house and then I leave my gun, then I can go back out and hike in the woods, everyone is still hunting, I don't have to wear hunter orange, according to this bill. My grandson can go out with me and ride his motor bike, mountain bike or whatever and he doesn't have to wear hunter orange, yet all of these people from the department are saying

that they want to protect the lives of those in the woods while hunting is going on. Then someone asked a question, "well why are the wildfowl hunters exempted"? Well someone said, "they are out near the ocean, near the big lakes". Another gentleman stood up and spoke, "I hunt wood duck at the beaver ponds and they are shooting all around me for other things". One hunter said, "I never saw a deer hunter not climb a tree, because he has to wear hunter orange up in the tree stand". There was one man who I felt his brother had been shot, yet he spoke against the hunter orange bill. Further testimony indicated that there were 28 accidents over a number of years, but further testimony indicated that 130,000 hunting licenses are sold here every year, they figured out that the accidents are about 1.6 or .7 hunters per year. Someone else asked a question which many of you people have been asking, "why us, they don't make the motorcyclists wear helmets, they make the people who have automobiles wear seat belts, don't more of them get killed"? They didn't understand that. What this boils down to is in this state, is that people don't want to be told what to do. I will be honest and fair, most of these people said that when anyone goes out into the woods they should wear hunter orange. But stop and think, how foolish is it? The hunter wears the hunter orange and you and I go out and hike, we don't have to wear it. I request that this be voted out inexpedient to legislate.

SENATOR COHEN: As obvious, the committee was divided on this. Many of us felt and were convinced by Senator Podles' eloquent testimony, that this bill ought to pass. This is about saving lives, this is about preventing unnecessary victims. It is not only the person who gets shot by mistake that is a victim, it is also the person who does the shooting, who is also a victim. They have to suffer for the rest of their lives, an accident that could easily have been avoided. When a hunter goes into the woods and there are other hunters there, he or she is not in control of his own fate without some sort of orange, without hunter orange, he or she can be a victim, easily without hunter orange. There is nothing else in the woods that is hunter orange. I have some samples here of a whole broad range of hunter orange which any of you can have. None of these colors appear in the woods, they are all very bright, they are very easy to see for a human. It is actually one of the most visible colors for humans; however, it happens to be the least visible color for deer. We have a chart here developed by the University of California showing game animals sensitivity to light. Some people were concerned that deer could see orange, they can't see orange, that is one reason why hunter orange is picked, because it is out of the range of vision of the deer, they can't see hunter orange. I passed out a series of, these were questions, these 10 questions that have been passed out, were the questions raised by the opponents to hunter orange. I would like to refer you to question number seven, "Why shouldn't non-hunters be required to wear orange clothing?" As it says, "accidents between hunters and other outdoor user groups seldom occur. Ninety-five percent of the time, accidents occur between hunters. New Hampshire has recorded only seven non-fatal accidents in 16 years and one fatality in approxiamately 30 years involving nonparticipants." The requirement for hunter orange is not restrictive. It is not restrictive, it is not an imposition to require to protect people that they wear a 99 cent hat. Senator Baldizar and I have agreed to pay for the first 10 orange hats that anybody would like to purchase. All questions have been answered. This is about saving lives, this is not restrictive on people. Most hunters already wear the hunter orange. We are just saying, yes, we do require hunter orange, it is not an imposition on peoples lives, we are

just protecting hunters and protecting the people who are being shot as well, so that they don't have to become unnecessary victims. Half of the committee urged a vote of ought to pass.

SENATOR WHEELER: Senator Cohen, does this bill require the Fish and Game Department personnel who are in the woods enforcing this new law to wear hunter orange while they are in the woods enforcing this law during hunting season?

SENATOR COHEN: They are wearing it anyway, and if there are hunters in the woods, then they would be required to wear hunter orange.

SENATOR WHEELER: I think that I mean the Fish and Game Personnel who are in the woods just enforcing the law, not hunting?

SENATOR COHEN: They would be wearing hunter orange, I assure you. They like to protect themselves.

SENATOR BALDIZAR: Senator Cohen, would you believe that generally I don't get involved in issues that require adults to use good judgement, but on this issue, I was contacted by so many people in my district and out of my district, many of whom are hunters who urged me to sponsor this. I said that I believed that somebody else was already in the process of sponsoring it, but that I would support it this time because I believe that it is only using God given common sense? Thank you.

SENATOR COHEN: Yes, I would believe that and I would believe that most hunters also do support this bill.

SENATOR LAMIRANDE (Rule #44): Senator Cohen, I have had a couple of inquiries on this. You know that I come from an area where there is an awful lot of hunting done. The question was that if this bill were to pass and it would require an individual to wear hunter orange, the bill states that you should wear at least one piece or article, alright? The question by my constituent was, "If I am wearing a hunter orange vest, but I am not wearing a hunter orange hat, my head is liable to get shot off," how do you resolve that problem?

SENATOR COHEN: Thank you for bringing up their question. It brings up the amendment which was agreed to by the committee, which does state that it just has to be at least one article. The way that the hunters head is protected from, as you said, "blasted off", is by wearing one piece of hunter orange. If another hunter in the woods sees one little bit of hunter orange, chances are, in fact, it would be impossible for the hunter orange to be floating there by itself, it has to be attached to a human being, so the hunter will steer clear of that hunter orange person.

SENATOR LAMIRANDE: Senator Cohen, I don't think that would exactly answer the question that my constituent had, because if the individual were doing something in the woods that might conceal certain parts of the body and maybe wearing hunter orange pants, then this would not comply, his head could still get shot off.

SENATOR COHEN: As the bill states, hunter orange has to be visible, it can't be worn and then covered up, that is the point of wearing it. Yes, it has to be visible on all sides.

SENATOR LOVEJOY: Senator Cohen, is it possible to be sensitive to the fact that all hunters are wearing a certain thing, is it possible that when they don't see that certain thing, that they will be more prone to shoot at it? Now isn't it possible, Senator Cohen, that there are other people in the woods and in the fields on their property, off of their property, doing other work who are not required by this bill to wear hunter orange? And isn't

it possible that we are saying to the hunters, "you must wear hunter orange" and therefore implying that if you don't have hunter orange on then you could be game?

SENATOR PODLES: Mr. President and Senators, first of all I would like to say that the Fish and Game Department does support the bill and they go on record. Also the Wildlife Association supports the bill and they go on record. SB 204 just requires the hunters for deer, that they shall wear some clothing of solid florescent hunter orange, visible from all sides. Senator Lamirande, the vest would be visible from all sides. I sponsored this legislation because of the hunter fatalities. There were two of them in the first week of the deer hunting season, and because there is evidence that 40 states and 10 Canadian provinces now mandating the use of some orange clothing is conclusive that increased hunter visibility with blaze orange, does reduce accidents and it does save lives. New Hampshire accidents information revealed that 28 total accidents occured in the "mistaken for game catagory," since 1977, and 27 of those victims wore no hunter orange clothing. Eight of those were fatal accidents. It is time for a change. Studies have also shown that accident reductions do happen when hunters wear hunter orange. A survey of states which represent 60 percent of the states requiring hunter orange reported decreases in total accidents ranging from 20 percent to 58 percent. Hunter orange is over twice as bright as most natural objects seen in woodlands. The florescent color shows quite well in fog and in snow. A condition where recognition is difficult with standard colors. I will tell you that there are many men alive today because of the hunter orange, because it works. The cost of an orange hat is only 99 cents, that is very low. The vest would run from $3 to $15 depending on the type of the vest that you buy. Some hunters have told me that they are willing to take their chances, they say, "I'll take my risk", they say, "that they hate to be told what they can do, it takes away their right to choose". This is no excuse for wearing dangerously traditional colored clothing. Attitudes like that must change. We should consider more than the life of the hunter who was killed, we should consider also, the life of the victim who pulled the trigger, he may be an upstanding citizen, an experienced hunter and intelligent person with a family, yet his life can be ruined because someone was willing to take the chance and it becomes a two person crime. In my opinion, it will be irresponsible of us not to mandate that hunters wear at least some hunter orange during the deer season. We could make deer hunting a safe sport in New Hampshire. Let's not wait for another tragedy to occur to get safety laws passed. Hunter orange is not a cure-all. I happen to believe that a combination of a quality hunter education program which we now have and a hunter orange law can substantially reduce hunting accidents. It would be a positive change for safety. I urge passage of this bill.

SENATOR MCLANE: Mr. President, I believe that the words of Senator Podles are so correct that I could add nothing to them. I highly recommend them.

Senator Blaisdell moved the question.

Adopted.

Amendment adopted.

Ordered to third reading.

Senators Colantuono, Currier & Wheeler in opposition to SB 204.

ANNOUNCEMENTS

SENATOR LAMIRANDE (Rule #44): I would like to echo the comments of our esteemed President and further state how pleased I am that a great deal of emphasis has been given to education. I will remind the Governor of how important kindergarten is in relation to innovative programs and how that piece of the puzzle has been missing in the state of New Hampshire much too long. Again, I am pleased with the earnest work Governor Merrill has put into the budget and hope that most of the outlined goals materialize. Thank you.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourned until Tuesday, February 16, 1993 at 1:00 p.m.

Adopted.

RECONSIDERATION

Senator Currier, having voted with the prevailing side, moved reconsideration of SB 149, relative to land surveying by proprietorships, corporations or partnerships, whereby we ordered it to the third reading and final passage.

SENATOR CURRIER: Because of a clerical error that was made by the committee on Executive Departments, the amendment was left off and the bill was put to third reading and final passage without the committee amendment. I would urge that we adopt this motion so that we can actually go back and put the amendment on it and then put it to third reading.

Adopted.

Senator Currier moved to have SB 149 relative to land surveying by proprietorships, corporations or partnerships, laid on the table.

Adopted.

LAID ON THE TABLE

SB 149, relative to land surveying by proprietorships, corporations or partnerships.

RECONSIDERATION

Senator Colantuono moved reconsideration on SB 135 establishing a commission on conciliation and mediation, whereby we ordered it to Interim Study.

SENATOR COLANTUONO: This was a bill in which the Executive Departments committee recommended interim study, forgetting that the new rule doesn't allow that in the first year. We wish now to move the bill inexpedient to legislate. I would ask the body to support that Mr. President, in order for that to happen the committee report of interim study would need to be defeated. So I ask the body to vote no on the committee report of interim study and then yes, on the new committee report of inexpedient to legislate.

Reconsideration is adopted.

SB 135, establishing a commission on conciliation and mediation.
Motion is on interim study.

Motion of interim study fails.

Senator Colantuono moved inexpedient to legislate.

Adopted.

Motion of inexpedient to legislate is adopted.

LATE SESSION

Third Reading and Final Passage

SB 26, relative to contracts between public adjusters and insureds.

SB 27, an act establishing a committee to study the apportionment of county taxes.

SB 37, an act adding and redefining terms relative to the New Hampshire pharmacy board.

SB 42, an act revising the committee studying a statewide trauma care system and extending the completion date for the committee's work.

SB 50, an act extending the report date and adding additional members to the law enforcement and prosecutor task force.

SB 74, an act changing the name of Civil Rights Day to Martin Luther King, Jr. Civil Rights Day.

SB 78, an act requiring that student records of transferring students be provided upon request.

SB 81, an act creating a task force to coordinate resources addressing sexual assault and sexual harassment at postsecondary institutions.

SB 204, an act requiring certain hunters to wear hunter orange.

Senator Disnard moved that the business of the day being completed, the Senate now adjourn until Tuesday, February 16, 1993 at 1:00 p.m.

Adopted.

Adjournment.

February 16, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

In case you didn't know it, it's snowing. Snow is a reminder that anything can be hidden, but only temporarily. And so may all of the decisions that you make this day and in the days ahead be ones that when the snow melts off of them, make you and us, smile. Let us pray: Oh Lord, pervade the Senate this day with the dangerous virtues of candor, courage, virtue and kindness and may they finish their work by 2:30 so that they may go home.
Amen

Senator J. King led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

SENATOR HOUGH (In the Chair): The appointments to the Ethics committee on behalf of the Senate President would be Senator Russman. The

Public member appointed by the Senate President would be Attorney Russell Hilliard. The appointment by the Democratic Leader, Senator George Disnard. Appointments by the Speaker of the House, Representative Kidder and Francis Robinson as the Public member. The appointment by the Democratic Leader Trombley, is Amanda Merrill and the Attorney General's Office, Deputy Attorney General, Dana Bisbee.

COMMITTEE REPORTS

SB 99, an act relative to private charitable trust funds. Banks committee. Re-referred to Committee. Senator Fraser for the committee.

SENATOR FRASER: This bill is intended to increase the usefulness of the charitable funds that are in private foundations. Under present federal law prior foundations are subject to excise tax and sometimes they are not very accessible to potential grantees. The concept deserves further review by the bills proponents with other interested parties to see if an agreement can be reached. Mr. President, the director of Charitable funds for the Attorney general's office agreed that this is a good idea, but that it needed work. So we are urging the Senate to support the motion of re-referred. Thank you.

The committee report of re-referred is adopted.

SB 152, an act relative to the real estate transfer tax assessment when a deed is given in lieu of a foreclosure. Banks committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: Mr. President and Senate members, this bill clarifies the definition of price or consideration used to determine the Real Estate Transfer Tax due when a deed is given in lieu of foreclosure. Last year the Department of Revenue Administration determined that in the event that a deed was given in lieu of a foreclosure the Real Estate Transfer Tax should be accessed on the amount negotiated between the borrower and the lender which is then applied towards the reduction of the principal or the balance. To that extent the DRA defined the amount to be taxed as the amount of 'forgiven'. The term, 'forgiven,' has caused confusion and misrepresentation among lenders. The intent of this bill is to further clarify the term, 'forgiven', by defining the amount on which a tax is to be accessed as the amount by which the debt is reduced. The DRA agreed to the clarification and the committee voted that it ought to pass.

Adopted.

Ordered to third reading.

SB 73-FN-A, an act making an appropriation to promote international tourism. Economic Development committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1450B

Amendment to SB 73-FN-A

Amend the bill by replacing section 1 with the following:

1 Appropriation. The sum of $1 is appropriated for the fiscal year ending June 30, 1994, to the department of resources and economic development for the purposes of international tourism promotion. This appropriation is in addition to other sums appropriated to the department of resources and economic development. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

SENATOR FRASER: The amendment is noted on page three, Mr. President. What it does is it reduces the $1 million appropriation to $1. This was at the request of the committee. It didn't seem that there was any support for that single figure of $1 million. Since then the committee that has been working on this piece of legislation will offer to the Senate, a break down of the charges on how that comprised $1 million, but the bill should be sent to the Senate Finance for them to review it. Mr. President, with that we urge its amendment.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

Recess.

Out of recess.

SB 126, an act continuing the Lamprey regional solid waste cooperative. Environment committee. Inexpedient to Legislate. Senator Lamirande for the committee.

SENATOR LAMIRANDE: Mr. President, SB 126 was voted inexpedient to legislate. I think that there are comments to be made on it.

SUBSTITUTE MOTION

Senator Shaheen moved to substitute re-referred to the Environment committee for inexpedient to legislate.

SENATOR SHAHEEN: Actually in meeting with Representatives from the Lamprey Solid Waste Cooperative, they asked me originally to put in a bill, but they weren't quite sure where they wanted to go with it and that is why a bill was introduced to begin with. Because they are not sure what needs to be done. I came before the committee and suggested that it be voted inexpedient to legislate because they just are not sure where they want to go. I think, however, if we re-refer it, it would give some more options, should the cooperative decide what needs to be done in the next six months or so. I would urge the Senate to vote to re-refer it.

Adopted.

SB 126 is re-referred to committee.

SB 129 an act relative to the overnight use of vessels and prohibiting the discharge of sewage into certain waters. Environment committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

1514B

Amendment to SB 129

Amend RSA 270-A:2 as inserted by section 6 of the bill by replacing it with the following:

270-A:2 Where Overnight [Mooring] ***Use*** Permitted. A [houseboat] ***vessel*** may be [beached or grounded, or tied to the shore of any of] ***secured on*** the inland surface waters of the state for an overnight period, or any part of an overnight period, only when on or at a location owned, leased, or otherwise under the control of the owner or operator of the [houseboat] ***vessel*** or by permission of the owner, lessee, or person otherwise in control of such location. An unoccupied [houseboat] ***vessel*** may be anchored on the inland surface waters of the state for an overnight period, or any part of an overnight period, only in an area reasonably adjacent

to a location owned, leased, or otherwise under the control of the owner or operator of the [houseboat] ***vessel*** or by permission of the owner, lessee, or person otherwise in control of such location.

SENATOR LAMIRANDE: Mr. President, the Department of Environmental Services has a responsibility associated with the control of marine pollution and protecting the lake water quality. The department supports the expansion of the provision of SB 129 as it has been their experience that the current limitations to crafts with sleeping and toilet facilities leaves too many unregulated boats being used overnight. The DES further stated that any efforts to protect the quality of our lakes with imposition of title regulatory control over vessel pollution is commendable. The committee voted SB 129 ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 167-FN, an act encouraging restaurants to provide recycling bins at their establishments by requiring the establishment of a recycling certificate to be awarded by the department of environmental services. Environment committee. Ought to Pass with Amendment. Senator Pignatelli for the committee.

1464B

Amendment to SB 167-FN

Amend the title of the bill by replacing it with the following:

AN ACT

encouraging restaurants to practice source reduction at their establishments by requiring the establishment of a waste reduction certificate to be awarded by the department of environmental services

Amend the bill by replacing all after the enacting clause with:

1 Statement of Purpose. The general court finds that there is a growing concern statewide with regard to solid waste management and that existing landfills are insufficient for our current solid waste needs. The general court also finds that using paper, glass and plastic products and other materials only once is costly, wasteful, and irresponsibly depletes our natural resources and that certain restaurants have already recognized the importance of recycling by providing recycling bins. Accordingly, the general court hereby finds it necessary to recognize and honor those restaurants that practice source reduction, recycling and composting at their establishments.

2 Chapter Heading Amended. Amend the chapter heading of RSA 149-N to read as follows:

RECYCLING LOGO ***AND WASTE REDUCTION CERTIFICATE***

3 Waste Reduction Certificate Established. Amend RSA 149-N:1 to read as follows:

149-N:1 Recycling Logo ***and Waste Reduction Certificate*** Established.

I. The department of environmental services shall establish the international 3 arrow recycling emblem with a designation of whether the item on which it is placed is recycled or recyclable material. This emblem shall be the exclusive symbol for use on material which is authorized to be so labeled under this chapter.

II. The department of environmental services shall establish a certificate to designate that a restaurant practices appropriate waste reduction, recycling or composting measures. This certificate shall be the exclusive symbol for use by restaurants designated by the department. The department shall develop criteria to be met to qualify restaurants for the certificate and requirements to be met for display of the certificate and shall provide to any restaurant which certifies that it meets the criteria, a certificate which may be displayed by the restaurant.

4 Waste Reduction Certificate; Use Restricted. Amend RSA 149-N:3 to read as follows:

149-N:3 Logo Use Restricted. Unauthorized [use of or] use of the logo contrary to the rules adopted pursuant to this chapter ***and unauthorized use of the certificate contrary to criteria adopted pursuant to this chapter*** shall constitute an unfair and deceptive trade practice within the meaning of RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of this chapter.

5 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill requires the department of environmental services to establish a waste reduction certificate to designate that a restaurant recycles or composts its solid waste. Such certificate may be displayed by the restaurant.

SENATOR PIGNATELLI: The purpose of SB 167-FN is to encourage restaurants to be environmentally responsible. The program will be instituted by the Department of Environmental Services which will develop a system to determine the criteria that qualifies restaurants for the certificate and will determine how the certificate will be displayed. Any business that displays the certificate or emblem associated with the program, if the establishment is not in accordance with the program, will be penalized for unfair and deceptive trade practices. This program will allow the consumer to be aware of the intentions of the local businesses and will assure the consumer that the restaurants in their area are trying to preserve the environment.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 169-FN-A, an act establishing a groundwater management permit fee and a hydrogeologist position within the division of water supply and pollution control, and making an appropriation therefor. Environment committee. Ought to Pass with Amendment. Senator W. King for the committee.

1527B

Amendment to SB 169-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT

enhancing the capability of the department of environmental services to perform environmental site assessment and remediation reviews required by lenders for the transfer of real property, creating a groundwater management permit fee to fund such enhanced capability,and making an appropriation therefore

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Purpose. The general court finds that property transfer and financing are key elements of significant economic development projects, and recognizes that uncertainty regarding environmental contamination impedes property transfers and financing. Site assessment and remediation reviews by the department of environmental services, are sought by lenders and others to assess potential environmental liability prior to real estate transfers or construction financings. The general court also finds that site assessment and remediation reviews not conducted in a timely manner act to further constrain credit in an already tight market and potentially cause harmful delays to some projects. As a result, projects which consume undeveloped land proceed more expeditiously than projects which require site assessment and remediation review on suitable existing sites. Since financial institutions have chosen to require state review of work performed by private consultants, additional capability to perform such reviews in a timely manner must be developed in-house at the department of environmental services. This legislation was recommended in the report of the study committee on an expedited environmental permit process. (SB 79 Chapter 180:1, Laws of 1991)

2 New Sections; Site Assessment Review and Groundwater Management Permit Fees Established. Amend RSA 485 by inserting after section 3-a the following new sections:

485:3-b Site Assessment Review Fee. Any person, except for state and local governments including counties and political subdivisions, who requests an expedited review of environmental site assessment reports by the department shall pay to the department a review fee based on the equalized assessed valuation of the property as follows:

Equalized Assessed Valuation	Fee
$0 to $250,000	$1,200
$250,000 to $500,000	$1,500
$500,000 to $1,000,000	$2,500
greater than $1,000,000	$5,000

The department shall provide written comments within 60 days after the date such reports and the required fees are received by the department.

485:3-c Groundwater Management Permit Fee. Any person, except for state and local governments including counties and political subdivisions, issued a permit under RSA 485:3, X shall pay to the department a groundwater management permit fee of $1,000. Any person who has paid the environmental site assessment review fee specified in RSA 485:3-b shall be exempt from the groundwater management permit fee.

485:3-d Annual Report Required. The department of environmental services shall submit an annual report of the status of the environmental site assessment review and groundwater management programs to the speaker of the house, president of the senate and the governor no later than September 1. The first such annual report will be submitted no later than September 1, 1994.

3 Appropriation; Position Established.

I. The sum of $72,600 is hereby appropriated to the division of water supply and pollution control, department of environmental services, for the fiscal year ending June 30, 1994, and the sum of $72,600 is hereby appropriated to the division of water supply and pollution control, department of environmental services, for the fiscal year ending June 30, 1995, for the purposes of this act. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

II. The division of water supply and pollution control, department of environmental services, shall establish, subject to prior approval of the fiscal committee, one (1) new position: one hydrogeologist III, who shall be a classified employee qualified by reason of education and experience, and who shall administer the groundwater management permit program. The PAU established for these positions is as follows:

03 Resource protection
04 Environmental services
03 Water pollution division
06 Groundwater permits
06 Groundwater permits

	Fiscal Year 1994	Fiscal Year 1995
10 Personnel services - permanent	$ 38,142	$ 38,142
18 Overtime	14,000	16,400
20 Current expenses	2,915	2,915
24 Maintenance other than building	400	400
30 Equipment	4,200	1,400
60 Benefits	11,443	11,443
70 In-state travel	1,000 1,400	
80 Out-of-state travel	500	500
Total	$ 72,600	$ 72,600

4 Effective Date. This act shall take effect July 1, 1993.

SENATOR W. KING: There is such a thing as a hydrologist, there is also such a thing as a hydrogeologist. This bill deals with hydrogeologist. It establishes a groundwater management permit fee and a position at the Department of Environmental Services of hydrogeologist. This is to help expedite the permitting process for businesses that are trying to get site assessments done. Currently the existing situation encourages raw, unused land to be used as opposed to other sites because it takes longer to get a site assessment. This is a recommendation of a special committee that we established two years ago to look at expediting permitting processes for economic projects.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 186-FN, an act requiring the division of water supply and pollution control to set standards of design and construction for unconventional waste treatment systems. Environment committee. Ought to Pass with Amendment. Senator W. King for the committee.

1523B

Amendment to SB 186-FN

Amend the amending language of section 1 of the bill by replacing it with the following:

1 Unconventional Waste Treatment System Standards; Reference Added. Amend RSA 485-A:4, IX to read as follows:

Amend the bill by replacing all after section 1 with the following:

2 Unconventional Wastewater Treatment Systems; Rulemaking Added. Amend RSA 485-A:6, III to read as follows:

III. Requirements under RSA 485-A:4, IX ***establishing the methodology and review process for approval of unconventional wastewater treatment systems.***

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill requires the division of water supply and pollution control to set standards of design and construction for unconventional waste treatment systems.

This bill also authorizes the division to adopt rules establishing the methodology and review process required for approval of unconventional wastewater treatment systems.

SENATOR W. KING: SB 186 requires the Division of Water Supply and Pollution Control to adopt some standards for the design and construction of unconventional wastewater treatment. It was the feeling of the committee that this would be a way in which particularly smaller communities in the state of New Hampshire could look at some infrastructure development that would allow some economic growth in their communities to occur without the kind of expense that would be associated with the state of the art sewage treatment.

SENATOR SHAHEEN: Senator King, could you explain what would be included in an unconventional waste treatment system?

SENATOR W. KING: Senator Shaheen, right now I am working with the town of Holderness for example, where they have a number of businesses that have gone under because they don't have adequate septic treatment next to the lake. But the town of Holderness can't afford to put in a huge sewage treatment facility, so they are looking at a technology that is about 3,000 years old called 'solar aquatics' where the waste is run through a series of greenhouses and certain plants, water hyacinths, specifically, that actually is just as effective at treating it as the major systems and a lot less expensive. So there are a number of new and old technologies that really aren't being utilized to the extent that they could, and so all that we are trying to do is to make sure that there is a process for those to be reviewed by the Department of Environmental Services and permitted if they believe that it is going to be adequate.

Amendment adopted.

Ordered to third reading.

SB 197-FN, an act implementing Title V of the Clean Air Act. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

1522B

Amendment to SB 197-FN

Amend RSA 125-C:11, III-a as inserted by section 7 of the bill by replacing it with the following:

III-a. A permit to operate, which may contain conditions, shall be issued prior to construction, operation, or material modification of any affected source, unless its issuance is objected to in a timely manner as authorized under the Clean Air Act, 42 U.S.C. 7401, et seq., as amended. Such permit to operate shall contain the emission limits the affected source is required to meet, and such other conditions to ensure that the

operation of the affected source will not result in a violation of any air quality standard or regulation enforced under this chapter. The term of the permit to operate shall not exceed 5 years.

Amend the bill by deleting section 12 and renumbering sections 13-16 to read as 12, 13, 14, 15, respectively.

SENATOR RUSSMAN: This bill brings the state into compliance with the Clean Air Act, Title V which has to do with point source pollution areas. The state already has a permitting process. This allows the EPA, actually it is required. If we don't do it, the EPA is going to do it. It gives the state the opportunity to regulate that. It is part of the Clear Air Act that has been passed by Congress.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 15-FN-A, an act to fund a new position and administrative costs for the board of examiners of psychology and mental health practice and making an appropriation therefor. Executive Departments & Administrations committee. Inexpedient to Legislate. Senator Bourque for the committee.

SENATOR BOURQUE: This bill was inexpedient to legislate because it is being taken care of in the next budget and it wasn't needed at this time.

Committee report of inexpedient to legislate is adopted.

SB 40, an act requiring the public utilities commission to disapprove of a portion of any rate related to certain advertising expenses. Executive Departments & Administrations committee. Inexpedient to Legislate. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, SB 40 resulted in a rather extensive hearing. It was the feeling of the majority of the committee that all of the issues that are addressed in SB 40 are already in the law or in the PUC regulations. After having spoken to the sponsor of the bill, he agrees with the committee that the bill ought to be reported out as inexpedient to legislate and then he will address his concerns in a subsequent bill probably next year.

SENATOR COLANTUONO: I was one of the committee members who voted against the inexpedient to legislate motion. I just wanted to state for the record that, or to amplify the record a little bit, that the PUC testified that all of the same issues that are brought up in this bill are presently in a docket which they are considering right now and they are dealing with these issues. Some of us on the committee wanted to put these into law to give the consumer extra protection, but it is the intention of at least some of us on the committee that if the PUC's docket procedure and final rulemaking that comes out that does not adequately effect the issues of limiting advertising expenses of utilities, we do intend to revisit this issue next year. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 72, an act relative to central business service district. Executive Departments & Administrations committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: This is enabling legislation that allows the central business district to have a formula that determines some linear footage, whatever they feel is important to the community to help with the assessments downtown and to beautify the cities and put the flowers in and to cleanup the sidewalks. I would urge passage of the bill.

Adopted.

Ordered to third reading.

HB 104, an act amending the way in which the towns of Londonderry and Sunapee shall collect their taxes for the fiscal year ending June 30, 1994. Executive Departments & Administrations committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: This bill was originally put in by certain Representatives from the town of Londonderry and myself as a co-sponsor to fix a problem that the town had when it changed over from the calendar fiscal year to the July fiscal year. It is a very important bill to the town and we appreciate the House and the Senate fast tracking this bill so that it can be heard and signed, hopefully, before our March town meeting. During the House process, the town of Sunapee came in to Municipal and County Governments and had a similar problem, and that has been addressed in section two of the bill. I would be happy to answer any questions specifically about what it does. It could take a long time to explain it, but, this bill is very much needed for the towns of Londonderry and Sunapee, and we request that it be passed.

Adopted.

Ordered to third reading.

SB 182-FN-LOCAL, an act requiring tax collectors to mail a duplicate copy of a property tax bill to a lienholder, upon written request of the lienholder. Executive Departments & Administrations committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill requires a tax collector to send a copy of a tax bill to any lienholder upon the request and with the inclusion of $1 to cover the cost. The bankers at the hearing were concerned, because they do not always get a copy of the bill, someone loses it or whatever, and they just want to make sure that the taxes are paid. I think that is a good bill as far as the cities and towns are concerned because they also want to make sure that the taxes are paid. I suggest that you approve it.

Adopted.

Ordered to third reading.

SB 58, an act allowing multiple employers to consolidate employment and wage information for purposes of unemployment compensation contributions. Insurance committee. Re-referred to committee. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President and members of the Senate, SB 58 was introduced by Senator Fraser and after he introduced it he found that the problem and the concept needed some new work. We all agreed in the committee that it should be referred back to the committee and that is the committee report.

Committee report of re-referred is adopted.

SB 76, an act establishing the right of a New Hampshire manufacturer to be indemnified by the purchaser or lessee of a New Hampshire product for injury or damage caused by such product. Insurance committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: Yes, this is an effort for New Hampshire manufacturers to have some indemnification for products that they make if they are properly used and someone is injured.

SENATOR COLANTUONO: Was there any concern expressed in the hearing about how we can pass a bill that gives special protection to New Hampshire manufacturers that we are not giving to any other manufacturers in terms of equal protection?

SENATOR RUSSMAN: It was raised but not significantly.

SENATOR COLANTUONO: What is the committees opinion about the issue, if they had one?

SENATOR RUSSMAN: We did not, as far as I know. We did not come to a consensus on that as an issue in and of itself. We looked at the bill and the primary testimony was in favor of the bill, so we passed it as it appeared.

SENATOR COLANTUONO: Was there any consideration or would the committee think that it would be advisable to get an opinion from the Supreme Court on that issue?

SENATOR RUSSMAN: It was considered and not done as far as requested to be done.

Adopted.

Ordered to third reading.

SB 181-FN, an act abolishing the New Hampshire retirement system special reserve account. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to ask you to vote ought to pass on the next six bills. Two of them, I will talk to each one of them, but I would explain what is happening. We want an ought to pass motion so that we can send them over to Finance. The idea is that they all, two of them, deal with medical retirement and four of them deal with retirement and we feel that we need to have Finance look at them to be sure that we have the money to fund them. We would ask you to vote ought to pass if possible.

Adopted.

Referred to the Division on Finance (Rule #24).

Senator Disnard (Rule #42) on SB 181.

SB 192-FN, an act relative to supplemental allowances for retirement system members. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee would like to ask for ought to pass.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 199-FN-LOCAL, an act relative to eligibility for medical benefits for group II retirement system members. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: SB 199, the committee on Insurance would ask that the bill be ought to pass.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 200-FN-LOCAL, an act relative to the payment of medical benefits to certain group II retirement system members. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee would like to ask ought to pass for the same reason as stated before.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 201-FN-L, an act determining how supplemental allowances shall be granted for retirement system members. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to ask for an ought to pass motion on SB 201 for the same reasons as stated.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 215-FN, an act providing a cost of living adjustment for group II permanent firemen members of the New Hampshire retirement system. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to ask ought to pass for the same reasons as stated.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 151-FN-A-LOCAL, an act requiring an animal population fee in addition to licensure fees for certain dogs and using the increase to fund a state animal population control program and continually appropriating the companion animal population control fund. Wildlife & Recreation committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, SB 151 pet overpopulation has taken a tremendous humane and economic toll on our state for some time. It used to be that the toll could be measured by the thousands of homeless animals leading miserable lives or killed in shelters or the hundereds of thousands of dollars spent to care and control them. Now with the arrival of rabies in our state, the toll threatens to be even greater. The Commissioner of Agriculture, Stephen Taylor and state veterinarian, Clifford McGinnis who will administer the program if this bill is passed, testified at the Senate Wildlife committee hearing in strong support of this bill. The other two groups who would be effected by this bill, veterinarians and animal shelter professionals, also

provided testimony strongly supporting this bill, through New Hampshire Veterinary Medical Association and the New Hampshire Federation of Humane Organizations. They explained that it is critical for us to reduce pet overpopulation now, because cats are the most common domestic source of rabies transmission to people and are also the greatest pet overpopulation problem in our state. The only opposition to this bill has come from people who breed and sell purebred puppies. It is difficult to understand why they are opposed to it. It is rare for a purebred puppy to enter the New Hampshire Animal Shelter. While the passage of this bill will mean that more sheltered animals will be spayed or neutered and placed back into the community, rather than being killed. This will not hurt the business of those who breed and sell purebred puppies in anyway. Since the establishment of low cost spay-neuter programs in New Jersey, more than 10,000 sheltered animals are adopted each year without hurting the business of pet owners or dog breeders at all. We could have the benefits of this program at remarkably little cost. It could be fully funded by $4 a year increase in dog license fees. There will be no cost to the state or any municipality. For a penny a day several thousand fewer animals will be killed in New Hampshires animal shelters, tens of thousands of dollars will be saved and the risk of disease or injury from homeless pets will be significantly reduced. After thoroughly studying this bill constantly, and considering the viewpoints of all that are involved, the committee voted, almost unanimously, that we should establish a low cost, spay-neuter program in New Hampshire. Please do not disregard our conclusions. Vote to pass this important piece of legislation. Thank you.

SENATOR COLANTUONO: Could you briefly explain the fiscal note and how the money in the bill, how it will increase the revenues and the expenditures that are referenced in the fiscal note?

SENATOR ROBERGE: Yes. The $4 would be divided up, fifty cents would be left with the municipality to administer the program and $3.50 would go to the Department of Agriculture.

SENATOR COLANTUONO: To do what?

SENATOR ROBERGE: To administer the program, to pay for the administration cost and pay for the fees of the veterinarians who would be employed to take care of this problem.

Adopted.

SENATOR ROBERGE: Mr. President and members of the Senate, this amendment is a statement of intent. That is the only thing that it does. The General Court recognizes that pet overpopulation in New Hampshire is a growing problem in New Hampshire; therefore, to protect public health and safety from the problems of pet overpopulation, including the threat of Mid-Atlantic rabies, the General Court hereby establishes an animal population control program. That is all that it does. It clarifies the bill.

Senator Roberge offered a floor amendment.

1562B

Floor Amendment to SB 151-FN-A-LOCAL

Amend RSA 437-A:2 as inserted by section 2 of the bill by replacing it with the following:

437-A:2 Program Established. The department shall establish and implement an animal population control program which shall be entirely funded by fees collected under this chapter. The purpose of this program shall be to reduce the population of unwanted and stray dogs and cats by encouraging the owners of dogs and cats to have them permanently sexually sterilized, thereby reducing potential threats to public health and safety from mid-Atlantic rabies and other sources. The program shall not begin operation until the commissioner has determined that sufficient funds are available to begin operation of the program.

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-4 to read as 3-5, respectively.

2 Statement of Intent. The general court recognizes that pet overpopulation in New Hampshire is a growing problem in New Hampshire. Therefore, to protect the public health and safety from the problems of pet overpopulation, including the threat of mid-Atlantic rabies, the general court hereby establishes an animal population control program in section 3 of this act. Such program is to be funded entirely from fees collected under the new chapter established in section 3 of this act and, therefore, such program shall not create a positive or negative fiscal impact.

SENATOR DISNARD: Senator, does this in any way conflict with SB 70?

SENATOR ROBERGE: No, it does not.

SENATOR DISNARD: Thank you.

Floor amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Currier moved to have SB 149, relative to land surveying by proprietorships, corporations or partnerships taken off of the table.

Adopted.

SB 149, relative to land surveying by proprietorships, corporations or partnerships.

SENATOR CURRIER: As you recall, SB 149 has had a calamity of experiences here in the Senate in that it has bounced from the table back and forth and so forth. When we moved for reconsideration in the last session, we moved reconsideration because of a clerical oversight, in that the committee amendment was not placed on the bill, and it was reported out as ought to pass. We moved to reconsider for the purposes of offering the committee amendment. The committee amendment deleted section eight of the bill and renumbered section nine to read number eight. Section eight was dealing specifically with provisions for temporary licensure for out-of-state practitioners of land surveying. The board had indicated a need to do away with that, and so that is what the committee amendment is dealing with in section eight of the bill. So I would urge the adoption of the floor amendment, #1368B and then the adoption of the bill as amended.

Senator Currier offered a floor amendment.

1368B

Floor Amendment to SB 149-FN

Amend the bill by deleting section 8 and renumbering section 9 to read as 8.

AMENDED ANALYSIS

This bill authorizes the issuance of a certificate of authorization to any proprietorship, corporation or partnership to engage in the practice of land surveying. The bill requires any proprietorship, corporation or partnership which wants to engage in the practice of land surveying to apply to the board of licensure for land surveyors for approval.

The bill also restricts the secretary of state from issuing any certificate of incorporation to any foreign proprietorship, corporation or partnership which has the words "surveying" or "surveyor" in its business name.

Floor amendment adopted.

Ordered to third reading.

ANNOUNCEMENTS

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourned until Wednesday, February 17, 1993 at 1:00 p.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 72, an act relative to central business service district.

SB 76, an act establishing the right of a New Hampshire manufacturer to be indemnified by the purchaser or lessee of a New Hampshire product for injury or damage caused by such product.

SB 129, an act relative to the overnight use of vessels and prohibiting the discharge of sewage into certain waters.

SB 149, relative to land surveying by proprietorships, corporations or partnerships

SB 151-FN-A-LOCAL, an act requiring an animal population fee in addition to licensure fees for certain dogs and using the increase to fund a state animal population control program and continually appropriating the companion animal population control fund.

SB 152, an act relative to the real estate transfer tax assessment when a deed is given in lieu of a foreclosure.

SB 182-FN-LOCAL, an act requiring tax collectors to mail a duplicate copy of a property tax bill to a lienholder, upon written request of the lienholder.

SB 186-FN, an act requiring the division of water supply and pollution control to set standards of design and construction for unconventional waste treatment systems.

HB 104, an act amending the way in which the towns of Londonderry and Sunapee shall collect their taxes for the fiscal year ending June 30, 1994.

Senator Disnard moved to adjourn until Wednesday, February 17, 1993 at 1:00 p.m.

Adopted.

Adjournment.

February 17, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rabbi, Ned Soltz, Senate guest Chaplain.

The privilege of service for the responsibilities of leadership. We ask for your blessing oh Lord upon those chosen to serve us, to serve our state, to serve our humanity. Grant them strength in their deliberations, wisdom in their decisions, those actions that they undertake may bring blessings to the residents of our state, to our beloved country and to all of humanity.
Amen

Senator MacDonald led the Pledge of Allegiance.

INTRODUCTION OF GUESTS
COMMITTEFE REPORTS

SB 5, an act repealing article 6 of the uniform commercial code on bulk sales and making conforming amendments. Banks committee. Ought to Pass. Senator Barnes for the committee.

SENATOR BARNES: Article six of the uniform commerical code has become little used in commercial transactions. It required complex and expensive notifications to creditors when certain limited types of businesses sold most of their assets. Its notification requirements have become a little known trap for the unwary buyer and it is being repealed around the country. Creditors have ample alternative means available to protect their interest. This is given on SB 5.

SENATOR FRASER: Mr. President, as a prelude to SB 5, SB 9 and SB 10, I would just like to make an opening statement. Uniform commercial code was adopted by the state of New Hampshire 32 years ago. On a periodic basis I commissioned, two of the commissioners by the way, are lawyers here in the state of New Hampshire, Attorney Mike Ruedig, here in Concord and Attorney Mike Dunn in Manchester, they are on the commission. Every so often they upgrade the uniform commercial code to get rid of those pieces of the code that are no longer necessary and tighten up those areas that are necessary. Last Friday, Mr. President, we had a protracted hearing involving three bills that you have before you that are coming out of Banks and I would certainly urge their adoption. There is this one abort that because of a mistake made in Legislative Services, article #4A is in your calendar as an amendment. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 9, an act adopting the uniform commercial code Article 2A on leases and conforming amendments to Articles 1 and 9. Banks committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: Mr. President and members of the Senate, leasing is an increasingly common method for the acquisition of personal property. Many cars, planes, heavy equipment, office equipment and other property is now leased rather than bought. Personal property leases are hybrid comprising some legal elements of sales, financing and abatements. Such complex transactions should have basic rules which

this bill provides. The bill has been enacted in 31 jurisdictions, and New Hampshire should adopt the bill to keep pace with this trend in the development of commercial law. It was the committees opinion that it ought to pass.

Adopted.

Ordered to third reading.

SB 10, an act revising Article 3 and Article 4 of the uniform commercial code. Banks committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1556B

Amendment to SB 10

Amend the title of the bill by replacing it with the following:

AN ACT
revising articles 3 and 4 of the uniform commercial code and adopting article 4A of the uniform commercial code

Amend the bill by replacing all after section 6 with the following:

7 New Article; Uniform Commercial Code. Amend RSA 382-A by inserting after article 4 the following new article:

ARTICLE 4A
FUNDS TRANSFERS

Part 1
Subject Matter and Definitions

382-A:4A-101 Short Title. This Article may be cited as Uniform Commercial Code - Funds Transfers.

382-A:4A-102 Subject Matter. Except as otherwise provided in Section 4A-108, this Article applies to funds transfers defined in Section 4A-104.

382-A:4A-103 Payment Order; Definitions.

(a) In this Article:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's 34struction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

382-A:4A-104 Funds Transfer; Definitions. In this Article:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) "Originator" means the sender of the first payment order in a funds transfer.

(d) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

382-A:4A-105 Other Definitions.

(a) In this Article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1-201(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	Section 4A-209
"Beneficiary"	Section 4A-103
"Beneficiary's bank"	Section 4A-103
"Executed"	Section 4A-301
"Execution date"	Section 4A-301
"Funds transfer"	Section 4A-104

"Funds-transfer system rule"	Section 4A-501
"Intermediary bank"	Section 4A-104
"Originator"	Section 4A-104
"Originator's bank"	Section 4A-104
"Payment by beneficiary's bank to beneficiary"	Section 4A-405
"Payment by originator to "beneficiary"	Section 4A-406
"Payment by sender to receiving bank"	Section 4A-403
"Payment date"	Section 4A-401
"Payment order"	Section 4A-103
"Receiving bank"	Section 4A-103
"Security procedure"	Section 4A-201
"Sender"	Section 4A-103

(c) The following definitions in Article 4 apply to this Article:

"Clearing house"	Section 4-104
"Item"	Section 4-104
"Suspends payments"	Section 4-104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

382-A:4A-106 Time Payment Order is Received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

382-A:4A-107 Federal Reserve Regulations and Operating Circulars. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

382-A:4A-108 Exclusion of Consumer Transactions Governed by Federal Law. This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.

Part 2
Issue and Acceptance of Payment Order

382-A:4A-201 Security Procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for

the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

382-A:4A-202 Authorized and Verified Payment Orders.

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in Section 4A-203(a)(1), rights and obligations arising under this section or Section 4A-203 may not be varied by agreement.

382-A:4A-203 Unenforceability of Certain Verified Payment Orders.

(a) If an accepted payment order is not, under Section 4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A-202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

382-A:4A-204 Refund of Payment and Duty of Customer to Report With Respect to Unauthorized Payment Order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

382-A:4A-205 Erroneous Payment Orders.

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

382-A:4A-206 Transmission of Payment Order Through Funds-Transfer or Other Communication System.

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

382-A:4A-207 Misdescription of Beneficiary.

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

382-A:4A-208 Misdescription of Intermediary Bank or Beneficiary's Bank.

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as

though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in Section 4A-302(a)(1).

382-A:4A-209 Acceptance of Payment Order.

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 4A-405(a) or 4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to Section 4A-403(a)(1) or 4A-403(a)(2); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant

to Section 4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

382-A:4A-210 Rejection of Payment Order.

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

382-A:4A-211 Cancellation and Amendment of Payment Order.

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

382-A:4A-212 Liability and Duty of Receiving Bank Regarding Unaccepted Payment Order. If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section 4A-209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

Part 3

Execution of Sender's Payment Order by Receiving Bank

382-A:4A-301 Execution and Execution Date.

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received

by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

382-A:4A-302 Obligations of Receiving Bank in Execution of Payment Order.

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to Section 4A-209 (a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection

with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

382-A:4A-303 Erroneous Execution of Payment Order.

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under Section 4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under Section 4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

382-A:4A-304 Duty of Sender to Report Erroneously Executed Payment Order. If the sender of a payment order that is erroneously executed as stated in Section 4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under Section 4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

382-A:4A-305 Liability for Late or Improper Execution or Failure to Execute Payment Order.

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of Section 4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

Part 4
Payment

382-A:4A-401 Payment Date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

382-A:4A-402 Obligation of Sender to Pay Receiving Bank.

(a) This section is subject to Sections 4A-205 and 4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to Section 4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not oblig-

ed to pay. Except as provided in Sections 4A-204 and 4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in Section 4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

382-A:4A-403 Payment by Sender to Receiving Bank.

(a) Payment of the sender's obligation under Section 4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under Section 4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under Section 4A-402(b) or 4A-402(c) occurs is

governed by applicable principles of law that determine when an obligation is satisfied.

382-A:4A-404 Obligation of Beneficiary's Bank to Pay and Give Notice to Beneficiary.

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

382-A:4A-405 Payment by Beneficiary's Bank to Beneficiary.

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Section 4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under Section 4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment

order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under Section 4A-406, and (iv) subject to Section 4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under Section 4A-402(c) because the funds transfer has not been completed.

382-A:4A-406 Payment by Originator to Beneficiary; Discharge of Underlying Obligation.

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under Section 4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the

originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

Part 5
Miscellaneous Provisions

382-A:4A-501 Variation by Agreement and Effect of Funds-Transfer System Rule.

(a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in Sections 4A-404(c), 4A-405(d), and 4A-507(c).

382-A:4A-502 Creditor Process Served on Receiving Bank; Setoff by Beneficiary's Bank.

(a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

382-A:4A-503 Injunction or Restraining Order With Respect to Funds Transfer. For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

382-A:4A-504 Order in Which Items and Payment Orders May be Charged to Account; Order of Withdrawals From Account.

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

382-A:4A-505 Preclusion of Objection to Debit of Customer's Account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

382-A:4A-506 Rate of Interest.

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

382-A:4A-507 Choice of Law.

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

8 Cross Reference; Application; Funds Transfers Added. Amend RSA 382-A:1-105(2) to read as follows:

(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified: Rights of creditors against sold goods. Section 2-402. Applicability of the Article on Bank Deposits and Collections. Section 4-102. Bulk transfers subject to the Article on Bulk Transfers. Section 6-102. Applicability of the Article on Investment Securities. Section 8-106. Perfection provisions of the Article on Secured Transactions. Section 9-103. ***Governing law in the Article on Funds Transfers. Section 4A-507.***

9 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill revises Article 3, negotiable instruments, and Article 4, bank deposits and collection, of the uniform commercial code. The bill makes certain amendments to Article 1 and Article 2 made necessary by the revision.

This bill also adopts Article 4A, funds transfers, of the uniform commercial code as state law.

SENATOR FRASER: Mr. President, SB 10 with the amendment revising the uniform commercial code, Article 3 commercial paper and article 4, the bank deposits and collections, enacting Article 4A wire front transfers. In the year since New Hampshire adopted Articles 3 and 4 of the uniform commercial code, our system for the payment and collection of checks has changed dramatically. The annual number of checks handled has increased from 3 billion to over 50 billion, at the same time Congress has required a more expeditious handling of the greater volume through the expedited funds availability act of 1987. Wire fund transfers which were rare until recently, have become an increasingly common method for prompting the aisle movements of funds in commercial transaction. The bill will fine tune Articles 3 and 4 to accommodate current practices in the handling of checks and would enact a new law governing the movement of funds by a wire transfer. It is essential that New Hampshire law governing the movement of funds keep pace with the rest of the country. I urge its adoption, Mr. President.

Amendment adopted.

Ordered to third reading.

SB 8-FN, an act offering every high school valedictorian in the state free tuition at state college grade institutions. Education committee. Inexpedient to Legislate. Senator Disnard for the committee.

SENATOR DISNARD: Mr. President, the committee unanimously voted inexpedient to legislate. The sponsor withdrew and nobody spoke for or against the bill.

SENATOR FRASER: I want to thank Senator Disnard for that report. It is absolutely true. if you just take a look at the fiscal note that was put on it. After I saw that, I very quickly asked Senator Disnard to kill the bill. I thought that I could still get it withdrawn, but I couldn't. I agree with the committees report.

Committee report of inexpedient to legislate is adopted.

SB 38, an act protecting against unauthorized access to teacher certification records. Education committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

1443B

Amendment to SB 38

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Teacher Certification Records Exempt from Right-to-Know Law. Amend RSA 91-A:5 by inserting after paragraph IV the following new paragraph:

V. Teacher certification records, both hard copies and computer files, in the department of education, provided that the department shall make available teacher certification status information.

AMENDED ANALYSIS

This bill protects teacher certification records from unauthorized access by exempting them from the right-to-know law, however such teacher's certification status shall be available.

This legislation was requested by the department of education.

SENATOR LAMIRANDE: SB 38 simply protects teachers certification records from unauthorized access by exempting them from the right-to-know law; however, this bill does not require that the Department of Education withhold teachers certification status information. SB 38 will ensure that the teachers privacy and rights are maintained, yet at the same time, parents will have access to the qualifications of their childs teachers; therefore, the Education committee recommends that SB 38 ought to pass.

SENATOR COLANTUONO: In your report, Senator, you said that the parents will still have access to the teachers qualifications. Do you mean that they will simply be able to know whether the teacher is certified or not or does it mean that they will be able to get some of the background that is in the file?

SENATOR LAMIRANDE: Parents fall into the catagory of authorized, so they are not unauthorized, Senator, so they will be able to have access to anything related to their children. Personal or private information, no.

SENATOR COLANTUONO: Will they be able to have access to the background information as to the qualification of the teacher that allowed them to get certification?

SENATOR LAMIRANDE: Yes they will.

SENATOR COLANTUONO: Thank you.

Amendment adopted.

Ordered to third reading.

SB 92-FN, an act to rename the school for lifelong learning of the university system of New Hampshire, the college for lifelong learning of the university system of New Hampshire. Education committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: It is with great pleasure that I present this bill. SB 92-FN changes the name of school for lifelong learning of the university system of New Hampshire to the college for lifelong learning of the university system of New Hampshire. The school for lifelong learning is a fully accredited college. The current name is deceiving and does not imply that the school for lifelong learning is an institution that awards degrees of higher learning. No other New Hampshire institution with degree granting authority whether public, independent or private, two or four years, uses the title 'school'. They are all termed 'college' or 'university'. Examples include, Plymouth State College, New Hampshire Technical College at Stratham and New England College. The education committee believes that the school for lifelong learning should be recognized as the institution of higher learning that it is, and thus recommends that SB 92-FN ought to pass.

Adopted.

Ordered to third reading.

SB 136-FN-A-LOCAL, an act establishing the New Hampshire education innovation fund and making an appropriation therefor. Education committee. Inexpedient to Legislate. Senator Disnard for the committee.

SENATOR DISNARD: The committee unanimously voted SB 136 inexpedient to legislate. It had a $1 million or what looked like a $2 million appropriation attached to it. The committee in all honesty was confused as to the intent of the bill, so we voted inexpedient to legislate, which I support; however, the prime sponsor has an amendment which I agree with.

SUBSTITUTE MOTION

Senator Russman moved to substitute re-referred to the Education committee for inexpedient to legislate.

SENATOR RUSSMAN: I would like to move to re-refer the bill in that I think that we can shed some light on the subject matter and come back with an understandable version that will go a long way towards innovative, creative education programs in the state.

Adopted.

SB 136 is re-referred to committee.

SB 137-FN-LOCAL, an act requiring municipalities to pay back to the state on a prorated basis moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes as determined by the state board of education. Education committee. Ought to Pass with Amendment. Senator Disnard for the committee.

1495B

Amendment to SB 137-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT
requiring municipalities to pay back to the state on a prorated basis moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Repaying the State Treasury. Amend RSA 198:15-b by inserting after paragraph V the following new paragraph:

VI. Any school district, city maintaining a school department, or cooperative school district receiving aid under this subdivision shall pay back to the state treasurer the amount granted by the board prorated according to the expected useful life of the building, if such building, during its expected useful life, is no longer used for educational purposes as provided in RSA 198:15-a, provided, however, that after the state has paid its total share of building aid the buildings may be used, without payback, for municipal purposes, including but not limited to offices or recreational facilities.

2 Building Plans. Amend RSA 198:15-c to read as follows:

198:15-c Approval of Plans, Specifications and Costs of Construction or Purchase. A school district maintaining approved schools, desiring to avail itself of the grants herein provided shall have the plans, specifications, and cost estimates for school plant construction or proposals for the purchase of school buildings, or both, and the costs for them approved by the state board prior to the start of construction. For this purpose the district shall submit its plans, specifications, cost and purchase estimates

in writing to the state board on such forms as the board prescribes. ***The plans shall include the expected useful life of the school buildings as determined by the governing body of the school district, with the concurrence of the department of education.*** Application for school building aid shall be submitted before January 1 of each year in order to be eligible for school building aid in the fiscal year following the year of submittal. The state board shall not approve the plans, specifications, cost or purchase estimates, if in the board's judgment the facilities planned will not adequately meet the educational requirements, or if its cost estimates are excessive or unreasonable. The state board shall not approve the plans, specifications, cost or purchase estimates if in the board's judgment the proposed construction or purchase is in conflict with effective statewide planning. Necessary costs of the purchase of school buildings may be determined by any recognized method of real estate appraisal with appropriate adjustments for remodeling or other expenditures. Upon approval of the construction or purchase, or both, by the state board of education, the school district shall be entitled to receive an annual grant as provided herein.

3 Applicability. This act shall apply to all educational facilities which are approved for building aid on or after the effective date of this act.

4 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill requires municipalities to pay back to the state on a prorated basis moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes.

The bill is applicable to all educational facilities which are approved for building aid on or after the effective date of the act.

SENATOR DISNARD: Thank you, Mr. President, this was a unanimous vote of those voting and attending at the Senate Executive committee. And the bill is now on page 19 of the calendar. It requires municipalities to pay back to the state on a prorated basis, school building aid if the municipalities decide to use the buildings for purposes other than educational purposes; however, I would like to explain that. In one particular instance in a city in this state, within six or eight years after the building was approved and the state approved building aid, the building aid over a 20 year period, which the school district ceased to use the building for educational purposes; however, there was some concerns which are addressed on page 19 section six. Any school district city maintaining a school department or cooperative school district receiving aid under this subdivision, shall pay back to the state treasurer the amount granted by the board, prorated, according to the expectable useful life of the building, of the new sections. If such building, during this expected use of life, is no longer used for educational purposes, as provided by RSA 198:15-A, provided however, that after the state has paid its total share of building aid, the buildings may be used without payback for municipal purposes, including but not limited for recreational facilities. Another concern expressed at the hearing, the middle of 198:15-C, the italicized, "the plan shall include the expectable useful life of the school building as determined by the governing body of the school district, with the concurrence of the Department of Education." Those were the areas that were in conflict with the testimony and they have been addressed by the amendment.

SENATOR SHAHEEN: Senator Disnard, did you discuss what the definition of expected useful life would be?

SENATOR DISNARD: The life of the bonding.

SENATOR SHAHEEN: Oh, okay. So in most cases, how long is that, do you have any idea?

SENATOR DISNARD: There are some districts that are 10, 20 or 30 years, whatever the bond issue would be, because the TAPE INAUDIBLE about that particular bond issue TAPE INAUDIBLE.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

HB 234, an act relative to the Winnisquam regional cooperative school district and the Tilton and Northfield union school district. Education committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: This was fast tracked at the request of the communities of Tilton and Northfield and Sanbornton. Perhaps the New Londons and the Bradfords and the Warners could take a lesson from this cooperative group because each of the communities, their selectmen, their school boards and a committee established to study this, which was not weighted in the favor of any other school district, they all had equal vote on the investigating committee. This is enabling legislation. It allows these communities to discuss how they would like to have their school districts changed so that each would be a separate school district. They would then be entitled to the foundation aid which they are not entitled to now because Tilton and Northfield are looked upon as a unified school district. It does dissolve the Tilton and Northfield Union school districts and leaves them with separate pre-existing school districts. The bill is intended to enable the Winnisquam Regional Cooperative School District to function better, and it is contingent upon voters approval at the town meeting. No one appeared in opposition. Selectmen, persons on the committee, persons from each of the school boards appeared and requested in favor.

Adopted.

Ordered to third reading.

SB 85, an act relative to the composition of the wetlands board. Environment committee. Ought to Pass with Amendment. Senator Pignatelli for the committee.

1580B

Amendment to SB 85

Amend the bill by replacing section 1 with the following:

1 Members of the Wetlands Board. Amend RSA 482-A:5, I(i) to read as follows:

(i) Four members of the public appointed by the governor and council for a term of 3 years or until a successor is chosen. One of these shall be a member of a municipal conservation commission at the time of appointment, and be one of 3 nominees submitted by the New Hampshire Association of Conservation Commissions; one shall be a supervisor, associate supervisor, former associate supervisor or former supervisor, of a conservation district at the time of appointment, and be one of 3 nominees submitted by the New Hampshire Association of Conservation Districts; one shall be an elected municipal official at the time of appoint-

ment, and be one of 3 nominees submitted by the New Hampshire Municipal Association; and one shall be a member of the construction industry at the time of appointment, and be nominated by the governor. The 4 members appointed under this subparagraph shall be ***qualified by reason of education and experience and shall be*** entitled to expenses as may be authorized by the governor and council.

AMENDED ANALYSIS

This bill requires that the members of the wetlands board be qualified by reason of education and experience.

SENATOR PIGNATELLI: SB 85 provides that the members of the Wetlands Board be qualified by reason of education and experience in the area of wetlands.

Amendment adopted.

Ordered to third reading.

Recess.

Out of recess.

SB 127, an act requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

1573B

Amendment to SB 127

Amend the bill by replacing all after enacting clause with the following:

1 Statement of Intent.

I. On November 18, 1992, the business finance authority ("BFA") authorized a refinancing of $75,000,000 of pollution control revenue bonds for Public Service Company of New Hampshire ("PSNH"). The conversion from taxable to tax-exempt status has resulted in an estimated savings of $825,000 per year in interest costs to PSNH.

II. PSNH has outstanding an additional $154,000,000 in taxable pollution control bonds which it hopes to convert to tax-exempt status under BFA bonding capacity in the future. Any such additional refinancings would result in substantial additional savings to PSNH in interest costs.

III. The rate agreement between the state and Northeast Utilities ("NU") which was approved by the New Hampshire Public Utilities Commission ("PUC") on July 20, 1990 and authorized by RSA 362-C and the NU reorganization plan to resolve the bankruptcy of PSNH did not anticipate the refinancings described in paragraphs I and II. In addition, the rate agreement did not make any provision for ratepayers to share in the savings that result from refinancings during the fixed rate period ending in 1997, which will result in an unanticipated financial benefit for NU, the owner of PSNH. At the end of the fixed rate period interest cost savings should accrue to ratepayers through normal rate base review and rate regulation by the PUC.

IV. The PUC approval of the rate agreement provided for only $1.167 million in PSNH expenditures to be used for conservation and load management which increases by 5.5 percent each year for the remainder of the fixed rate period. This is the lowest per customer expenditure for conservation and load management of any major electric utility in New England.

V. Pollution control facilities are structures or equipment from which a company usually derives no direct economic profit. A utility company that uses tax-exempt pollution control bonds authorized by the state to refinance such facilities is not expected to directly increase its profits from such a refinancing. However, by directing that at least half of the interest savings that result from such tax-exempt refinancings be used for pollution abatement by investing in energy efficiency and conservation measures, the legislature will help stimulate investments that will result in a decrease in demand and a more efficient electric system without raising electric rates.

VI. The general court finds that sufficient public benefit will be realized with the conditions provided for in this act to recommend to the BFA that further conversions of taxable PSNH bonds to tax exempt status be considered and encouraged to the extent that the BFA has tax exempt private activity bond limit capacity available near the end of each year after other priorities have been considered by the BFA.

2 Investment of Savings from Debt Refinancing in Energy Conservation and Efficiency Required. At least half of the savings that result from the BFA's refinancing of PSNH taxable debt with tax-exempt pollution control bonds, as referenced in section 1, from the effective date of this act until the end of the fixed rate period, shall be used by PSNH for capital expenditures to reduce negative environmental impacts and pollution from unnecessary power generation by investing in energy conservation and efficiency measures which also benefit ratepayers and stimulate the efficient economic development of New Hampshire, without any rate increase to ratepayers, as provided for under section 5(a)(V)(A) of the rate agreement.

3 PUC Implementation and Discretion. The PUC shall regulate the implementation of section 2 of this act and shall suspend or waive all expenditures required herein to the extent they find that such expenditures would trigger an increase in electric rates due to a drop through the floor in PSNH's return on equity as provided for in the rate agreement, or due to any other reason.

4 BFA to Condition Future Refinancings. The BFA shall secure PSNH's written agreement to the provisions of sections 2 and 3 of this act prior to authorizing any additional tax-exempt refinancings of taxable PSNH bonds which may be issued before the end of the fixed rate period of the rate agreement.

5 Effective Date. This act shall take effect 60 days after its passage.

SENATOR RUSSMAN: The members attending the executive session on this bill of the Environment committee voted unanimously to pass it as amended. My understanding is that the prime sponsors are going to ask that the matter be tabled until tomorrow, they are not prepared to go forward today.

Senator Fraser moved to have SB 127 an act requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency, laid on the table.

Adopted.

LAID ON THE TABLE

SB 127, an act requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency.

SB 225-FN, an act relative to shoreland protection. Environment committee. Re-referred to committee. Senator MacDonald for the committee.

SENATOR MACDONALD: SB 225 calls for a number of improvements and housekeeping changes in the shoreline protection act. At the hearing we had a great many ideas that came in and three amendments. What the committee would like to do is to have a chance to review these amendments and the comments and have additional time to work on the shoreline protection acts. It is one of those things that when you get the landowners and other people to work together, and when you go in the right direction you want to keep the thing going, so we have asked to have the thing re-referred and the sponsor had no problem.

Committee report of re-referred is adopted.

SB 32-FN, an act relative to certified pharmacy technicians. Executive Departments & Administrations committee. Split Vote: Re-referred to committee. Senator J. King for the committee. Split Vote: Inexpedient To Legislate. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, as you note there was a split in the committee on this bill. The three votes in support of inexpedient to legislate was based on the fact that these pharmacy technicians, they work under the direct supervision of pharmacists. Pharmacists, in turn are very closely regulated by the Board of Pharmacy. We felt that there was no need for this legislation; it was just creating another level of bureaucracy.

SENATOR J. KING: This half of the committee suggest that it be re-referred. What they tried to do, the technicians, is to become certified. Their job is to assist the pharmacists, and that was a concern to this other half of the committee. There was one instance where, if a person committed an offense there would be some register where the new hiring would be knowledgeable of the fact. Another was a surprise on where the support came from as far as this bill was concerned. Contrary to what we think, the small mom and pop pharmacies were for the bill and the large companies were not for the bill. Maybe this half didn't know how important and risky a technicians job is. Maybe they don't need to TAPE INAUDIBLE. Maybe the committee doesn't have enough knowledge, we don't feel that we have. My feeling is, that if a technician that is going to be handling the pharmacutical end of it in any way, shape or manner, that there should be some kind of a control over it. But I have no problem with technicians to do the job, as of stocking and other chores that are in a pharmacy, but I would not approve of those who handle that kind of work doing the technicians job. Again, we ask that it be re-referred for more study.

SENATOR COLANTUONO: As another one of the committee members who voted for re-referral, I would like to state to the members that I spoke with both of the sponsors of the bill and they recognized that some of the problems arose from the way that the bill was drafted. It doesn't give very much definition, and they are more than willing to work with the committee if the matter is re-referred. And they expressed their willingness to be able to do that.

Committee report of re-referred is adopted.

SB 33, an act relative to licensing of certified public accountants. Executive Departments & Administrations committee. Re-referred To committee. Senator Bourque for the committee.

SENATOR BOURQUE: The committee asked that we re-refer this bill because there are four Senators sitting on the ED & A right now and we also sit on the Joint Administrative Rules and we are in the process of looking at some rules changes on this particular subject. We ask that you vote this bill re-referred just in case, for next year.

Committee report of re-referred is adopted.

SB 39, an act making a technical correction in the enhanced 911 system law. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Currier for the committee.

1518B

Amendment to SB 39

Amend the title of the bill by replacing it with the following:

AN ACT

making a technical correction in the enhanced 911 system law and specifying a 4-year term for the executive director of the bureau of emergency communications.

Amend the bill by inserting after section 2 the following and renumbering the original sections 3 and 4 to read as 5 and 6, respectively:

3 Term Added. Amend RSA 106-H:6, I to read as follows:

I. There shall be an executive director of the bureau who shall be an unclassified employee and shall be compensated as provided in RSA 94:1-a. The executive director shall ***serve a 4-year term and shall*** be appointed by the governor with the approval of the council from 3 persons nominated by the commission.

4 Applicability. The 4-year term for the executive director of the bureau of emergency communications shall apply to the person serving in that capacity on the effective date of this act. The term shall begin on the date of such person's appointment or the effective date of this act, whichever is later.

AMENDED ANALYSIS

This bill makes a technical correction in the enhanced 911 system law enacted under 1992, 165.

The bill also specifies a 4-year term for the executive director of the bureau of communications.

SENATOR CURRIER: This bill is a wake up call for all freshmen senators because this bill happens to be something that had to be filed to correct problems that we had during the Committee of Conference time, last session of the legislature. We moved so quickly and you can tell from the pace that we are experiencing today and in the last couple of days, that the pace gets pretty fast. SB 39 corrects some technical problems with the enhanced 911 legislation that was dealt with last session of the legislature that somehow inadvertently through the fast pace got dropped off of the bill. Specifically, some of the references to where the enhanced 911 commission was going to be housed. Originally it was in Safety and they moved it to Administrative Services. But the references to Administrative Services didn't get changed from the Department of Safety. There was also an interesting thing left off that the term limit of the new Executive Director of the Enhanced 911 emergency communications bureau was a lifetime appointment. The term limit got left off of the bill during the process of the Committee of Conference. So when I say that this is a wake up call, it is things that we need to be aware of as the Committee of Con-

ference time proceeds here in the Senate, and so that we can hopefully, eliminate problems like this that might occur in the upcoming session.

SENATOR LOVEJOY: Would the good Senator believe that this freshman Senator is safe on this because he is going to vote with the Senator who made the report?

SENATOR CURRIER: Thank you.

Amendment adopted.

Ordered to third reading.

SB 43, an act relative to the state board of auctioneers. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1568B

Amendment to SB 43

Amend the bill by deleting section 2 and renumbering section 3 to read as 2.

AMENDED ANALYSIS

This bill increases the number of members on the board of auctioneers.

SENATOR COLANTUONO: This bill was submitted by the board of auctioneers and they tried to do two things. In the first paragraph it increased the number of the board from five to nine members. The committee believes that is a good thing to do. The reason for it is because the board is not able right now to appoint subcommittees to handle various matters and that really restricts their ability to do their work. The committee recommends the amendment which is simply paragraph one of the bill. Paragraph two deleted certain exemptions to the present law which allows persons holding foreclosure sales, deputy sheriffs and sheriffs sales, executor and administrator sales, attorney's who sell things, from having to hire licensed auctioneers to do those. The committee felt that that particular provision was just an attempt to increase the business of the auctioneers and it wasn't really appropriate, so we eliminated that from the amendment which appears on page 22. With the amendment, we recommend that the bill be ought to pass.

Amendment adopted.

Ordered to third reading.

SB 77, an act relative to resellers of telecommunication services. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1567B

Amendment to SB 77

Amend the bill by replacing section 2 with the following:

2 New Sections; Resellers of Telecommunication Services Exempt; Registration Required; Penalty for Failure to Register. Amend RSA 362 by inserting after section 6 the following new sections:

362:7 Resellers of Telecommunication Services Exempt. Telecommunications service providers registered under RSA 362:8 which do not own telephone lines or exchanges doing business in New Hampshire and providing a service to the public exclusively through the resale of services purchased from other service providers operating, owning, or controlling telephone lines or exchanges doing telephone business in New Hampshire shall not be regulated by the commission.

362:8 Reseller Registration. Resellers of telecommunication services conducting business in New Hampshire solely under RSA 362:7 shall register with the public utilities commission and shall provide the public utilities commission with the following information:

I. The name and physical location of the registrant's main office.

II. The mailing address for the registrant.

III. The registrant's telephone number.

IV. A certificate of incorporation, if incorporated.

V. The names and addresses of officers.

VI. A statement declaring that the registrant will be in the exclusive business of the resale of telecommunications and does not own or operate telephone lines or exchanges and therefore is not subject to jurisdiction by the New Hampshire public utilities commission.

362:9 Penalty. Failure of a reseller to register with the public utilities commission under RSA 362:8 shall be punishable by a fine of up to $25,000.

AMENDED ANALYSIS

This bill exempts resellers of telecommunication services from the definition of a public utility, requires resellers to register with the commission, and provides for a penalty for failure to register.

SENATOR COLANTUONO: The committee amendment is on page 22 of the calendar. I was prepared to give a lengthy explanation of this bill because it is a fairly complicated topic, but I understand that it is the desire of the chair to refer this matter to Economic Development, so with that in mind I will simply say that the amendment basically takes companies who are resellers of telecommunication services out of the full ambit of regulation of the PUC and simply requires them to be registered with the PUC. The committee felt that was, well at least the majority of the committee felt that was all the regulation that was necessary in this state of resellers. I would be happy to answer any further questions if anyone wishes to ask any.

SENATOR DISNARD: Senator Colantuono, does this indicate that MCI, Sprint, AT & T would not be under regulations if this should be passed by whatever policy committee recommends it to this Senate? And that the New England Telephone Company would be regulated and that would be unfair competition?

SENATOR COLANTUONO: No, this bill does not say that.

SENATOR DISNARD: Thank you.

Amendment adopted.

Referred to the Economic Development committee (Rule #24).

SB 132, an act relative to the public hearing and comment process on administrative rules. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1520B

Amendment to SB 132

Amend the title of the bill by replacing it with the following:

AN ACT
relative to the Revised Statutes Annotated, and creating
a committee to study the rulemaking process.

Amend the bill by replacing all after the enacting clause with the following:

1 Reference Changed to Official Revised Statutes Annotated. Amend RSA 20:2-b to read as follows:

20:2-b Revised Statutes Annotated. The director of legislative services is hereby authorized to contract, with the approval of the joint committee on legislative facilities, for the editorial preparation, publication, distribution and sale of original, replacement or revised volumes of the ***official*** Revised Statutes Annotated and periodic supplements thereto, and to establish the sale price thereof as he, with the approval of said committee, deems necessary in order to provide that said publications are kept current and that a sufficient supply thereof is available to the state and the public. The costs of the publication herein provided for shall be a charge against the appropriation for joint legislative printing.

2 Rulemaking Study Committee.

I. Statement of Intent. It is the intent of section 2 of this act to study and recommend ways of improving rulemaking by clarifying the manner in which the general court delegates rulemaking authority to state agencies to implement laws. Further, it is the intent of section 2 of this act to study the provisions of the administrative procedures act, RSA 541-A, in order to recommend ways to improve legislative oversight of state agency rules and the rulemaking process. The study committee shall ensure that the public's access to rules and the rulemaking process is safeguarded.

II. Committee Established; Membership; Compensation. A committee is established to study the granting of rulemaking authority by the general court to state agencies, legislative oversight of administrative rules, and the requirements and procedures of the rulemaking process. Members of the committee shall not be compensated; however, legislative members shall receive mileage at the legislative rate. The members of the committee shall be as follows:

(a) Two senators, one of whom shall be a member of the joint legislative committee on administrative rules, appointed by the senate president.

(b) Two representatives, one of whom shall be a member of the joint legislative committee on administra tive rules, appointed by the speaker of the house.

(c) Two commissioners of state agencies, appointed by the governor.

(d) One member representing an administratively attached agency as defined in RSA 21-G:5, I, appointed by the governor.

(e) The director of legislative services, who shall be an ex officio member.

(f) One member representing the governor appointed by the governor, who shall be an ex officio member.

III. Duties.

(a) The committee shall study the following 2 areas of the rulemaking process:

(1) First, the committee shall study how to delegate legislative authority in a clear and consistent manner; how specific grants of legislative authority should be granted versus how much should be left to the agencies' discretion; the granting of rulemaking authority to boards or commissions versus a single administrative official; and to whom and at what level within each agency rulemaking authority is delegated.

(2) Second, the committee shall study the provisions of the administrative procedures act relative to legislative oversight and the rule-

making process; recodifying and revising the laws regarding the requirements and procedures for legislative oversight of state agency administrative rules; filing and procedural requirements; style and format requirements; and ensuring public access to rules and the rulemaking process.

(b) The committee shall have full power and authority to require from the several departments, agencies, and officials of the state and the political subdivisions of the state such information and assistance as it may deem necessary.

IV. Chair; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senator. The first meeting of the committee shall be held within 45 days of the effective date of this act. Four members of the committee shall constitute a quorum.

V. Report. The committee shall report the results of its review, including its findings and recommendations, of the delegation by the general court of rulemaking authority to state agencies and its study of the administrative procedures act and any proposed legislation to the governor, the senate president and the speaker of the house of representatives no later than November 1, 1993, for submission in the 1994 legislative session.

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

The bill clarifies that it is the official Revised Statutes Annotated for which the director of legislative services is authorized to contract for the editorial preparation, publication, distribution and sale of original, replacement or revised volumes of the Revised Statutes Annotated and periodic supplements thereto.

The bill also establishes a committee to study both the delegation by the general court of rulemaking authority to state agencies as well as the provisions of the administrative procedures act relative to legislative oversight of agency rules and the rulemaking process. The committee shall complete its report and proposed legislation by November 1, 1993, for submission to the 1994 session of the general court.

SENATOR COLANTUONO: This bill was originally drafted to clear up some confusion as to which persons had to be present during rulemaking processes. As the bill went through the process, a lot of confusion developed and the sponsor decided to request that the committee amend the bill into a study committee on the whole issue of the way that rules are made. That study committee is set forth on page 23 of the calendar. There is also a minor amendment dealing with defining the official revised statutes annotated on page 23. So with that amendment the committee recommends ought to pass.

Amendment adopted.

Ordered to third reading.

SB 133, an act relative to the disciplinary, investigative and subpoena powers and the rulemaking authority of the board of chiropractic examiners. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1528B

Amendment to SB 133

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-5 to read as 4-6, respectively:

3 Three-month Time-frame for Hearing Deleted. Amend RSA 316-A:23 to read as follows:

316-A:23 Notice and Hearing Procedure. The board shall take no disciplinary action without a hearing. At least 14 days prior to hearing, both parties to a disciplinary proceeding shall be served, either personally or by certified mail, with a written copy of the complaint filed and notice of the time and place for hearing. All complaints shall be objectively received and fairly heard by the board, but no complaint shall be acted upon unless in writing. [A hearing shall be held on all written complaints received by the board within 3 months of the date notice of a complaint was received by the accused, unless otherwise agreed to by the parties.] Written notice of all disciplinary decisions made by the board shall be given to both parties to the proceeding upon their issuance.

AMENDED ANALYSIS

This bill provides the board of chiropractic examiners with investigative and subpoena powers, and authorizes the board to impose civil penalties. It allows the board to make rules without the approval of the director of public health services, removes the 3-month time-frame to conduct a hearing, and repeals the section on the powers and duties of the director of public health services relative to rulemaking by the board.

SENATOR COLANTUONO: This bill was part of the ongoing process of trying to clean up our licensing laws to make sure that they all read in a fairly similar manner. The Board of Chiropractors up to this point, do not have any power to levy fines like most of the other professional boards and they don't have the power to investigate and issue subpoenas. This bill would give them that power. The amendment on page 24 was added to take out some language in the present law which restricts the time-frame that they have to conduct investigations to a 90-day time-frame, which is totally unreasonable and unworkable. So with the amendment on page 24, the committee recommends ought to pass.

Amendment adopted.

Ordered to third reading.

SB 134, an act establishing a committee to study the need for reasonable standards and procedures for contracting services by the state. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Lovejoy for the committee.

1565B

Amendment to SB 134

Amend section 2 of the bill by inserting after paragraph VI the following new paragraph:

VII. One member from the private sector who shall be an efficiency expert, appointed by the governor.

SENATOR LOVEJOY: This bill establishes a committee to study the efficiency of the effectiveness of the personal service contracts and their impact upon the states workforce. The committee shall recommend a spe-

cial contract review procedures to monitor states services provided through the use of personal service contracts. There was an amendment to the bill, it was a minor amendment that added one member to the committee. You will find that on page 24 at the bottom of the page of the calendar. The committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 143-FN, an act establishing a process for policy analysis of state agencies and making an appropriation therefor. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1508B

Amendment to SB 143-FN

1 Amend the bill by replacing section 6 with the following:

6 Appropriation. The following sums are hereby appropriated to the legislative budget assistant for the purposes of this act, and shall be continuing and shall not lapse. The governor is authorized to draw his warrant for said sums out of any money in the treasury not otherwise appropriated:

	Fiscal Year 1994	Fiscal Year 1995
10 Personal services - permanent		
Policy analyst supervisor	$ 23,673	$ 47,346
Policy analyst	9,942	39,769
Staff analyst III	6,708	26,832
Total	$ 40,323	$113,947
60 Benefits	$ 12,500	$ 35,324
90 Other expenditures	47,905	
Total	$100,728	$149,271

SENATOR FRASER: Mr. President, this policy analysis committee would be mandated through study, inactive entities to eliminate duplication of entities to eliminate the inefficient, unnecessary, and ineffective activities within state government. On page 25, Mr. President, is the amendment. It articulates the budgets that would be required in order to have this new division within the office of the Legislative Budget Assistance. We urge its adoption.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 165-FN, an act relative to certification of landscape architects. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1526B

Amendment to SB 165-FN

Amend RSA 310-C:1, II, III and IV as inserted by section 1 of the bill by replacing them with the following:

II. "Certified landscape architect" means a person holding a certificate of entitlement to be called by the title "certified landscape architect" in this state.

III. "Joint board" means the joint board of engineers, architects, land surveyors, foresters, and natural scientists established under RSA 310-A:1.

IV. "Landscape architecture" means the rendering of professional service such as consultation, investigation, research, land planning, design, preparation of drawings and specifications, or responsible observation of construction in connection with the development of land areas. Such services relate to the preservation, enhancement, or determination of proper land uses, including natural land features, planting, naturalistic and aesthetic values, the settings and approaches to structures or other circulation improvements, the shaping and contouring of land and water forms, and determining environmental impacts and problems of land, including erosion, sedimentation, and other hazards. Performance of services shall be in accordance with accepted professional standards for public health, safety and welfare, and as may be prescribed by local or state authorities. This definition does not include the design of structures or facilities as are ordinarily included in the practice of engineering or architecture, the making of final land plots for official recording or approval as are ordinarily included in the practice of land surveying, or the preparation of planting plans and incidental items by gardeners or landscape contractors.

Amend RSA 310-C:4 as inserted by section 1 of the bill by replacing it with the following:

310-C:4 Restricted Use of the Title "Certified Landscape Architect."

I. No person shall use the title "certified landscape architect" on any sign, title, card, or other advertisement to indicate that such person is a certified landscape architect, unless such person has secured certification from the board as a certified landscape architect.

II. Every certified landscape architect shall have a seal of a design authorized by the board. All plans, specifications and reports prepared by or under the supervision of a certified landscape architect shall be stamped with the impression of such seal. The seal of a certified landscape architect shall be impressed upon any plans, specifications or reports only if the certification is in full force and if the certified landscape architect was the author of such plans, specifications and reports, or in responsible supervision of their preparation.

Amend RSA 310-C:7, III as inserted by section 1 of the bill by replacing it with the following:

III. A candidate failing any section of the examination may apply for reexamination of any section failed upon payment of an additional examination fee determined by the board, and shall be reexamined on the next regularly scheduled examination date. A candidate failing the entire examination or any section of the examination 3 consecutive times shall be required to furnish evidence of additional experience, study or education credits acceptable to the board before being allowed to retake the entire examination.

AMENDED ANALYSIS

This bill provides for the certification of landscape architects and provides that only those people shall be allowed to use the designation "certified architect." The bill does not preclude others from doing landscape architect activities, but prevents them from using the title of "certified architect."

The bill establishes a board of 4 landscape architects and one public member. The board's duties include establishing application and examination procedures, and criteria for certification. The board is given rule-

making authority in these and other areas. Certification shall be allowed for examination performance or educational or work experience.

The board may waive education and examination requirements for certification of present landscape architects with minimum qualifications for 6 months after passage of the bill.

SENATOR FRASER: Mr. President, with your permission I would like to defer the report of SB 165 to the sponsor, Senator Roberge.

Recess.

Out of recess.

SENATOR SHAHEEN: Senator Fraser, I have a question for you.

SENATOR FRASER: Senator Shaheen, I would like to defer to Senator Roberge, since she is the sponsor of this bill.

SENATOR SHAHEEN: Can you tell me why we need to certify landscape architects?

SENATOR ROBERGE: Testimony at the committee hearing was that our state does not recognize the term 'certified landscape architects,' but the federal government in their stacks that go out for bids, have the specifications that only a certified landscape architect can bid on certain projects. And our landscape architects felt that they were being disinfranchised because the business in our state was being given to architects in Massachusetts and some of the other states that recognize that term.

SENATOR SHAHEEN: Actually, this is more like a would you believe. I have a cousin who does landscape architecture in the seacoast who has gotten a number of contracts with Pease when it was the former air base, so they would have obviously been federal contracts, but he is not certified by anybody in New Hampshire. So I guess my question is, how could that happen and if that is going on, then wouldn't it speak to the fact that we really wouldn't need to certify people in order to get federal contracts?

SENATOR ROBERGE: That was not brought out in the committee hearing and this is the first time that I have heard of that. What I heard at the committee hearing is just what I related to the chamber.

SENATOR LAMIRANDE: Senator Roberge, the amendment as I am reading it, describes basically the criteria that is met by a civil engineer, yet what this bill is saying is that unless they are certified as a landscape architect they will not be able to use the term landscape architect. Am I correct?

SENATOR ROBERGE: That is correct. They could still do business, but they wouldn't be able to use the term.

SUBSTITUTE MOTION

Senator Currier moved to substitute re-refer to committee for ought to pass with amendment.

Senator Roberge moved to have SB 165-FN laid on the table.

Senator Roberge withdrew the motion.

Question is on the substitute motion of re-refer to committee.

SENATOR FRASER: Mr. President, this in my view, and I am a member of the Executive Departments as the bill indicates. It is a good bill. I deferred to Senator Roberge because of the fact that this is a bill that she is rightly interested in and I agree with everything that she has sug-

gested, that this is kind of keeping us up-to-date with the federal law. I would like to see the motion of re-referred defeated and that the bill be sent on.

Question is on the motion of re-refer to committee.

Division is requested.

Yeas: 12 - Nays: 12.

Motion of re-referred to committee fails.

Question is on the committee amendment.

Adopted.

Senator Blaisdell moved to have SB 165 an act relative to certification of landscape architects, laid on the table.

Adopted.

LAID ON THE TABLE

SB 165, an act relative to certification of landscape architects.

SB 223-FN, an act allowing appeals of permanent impairment awards to the compensation appeals board. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee would ask ought to pass on SB 223. This bill would allow a person aggrieved by a decision by the labor commission regarding an impairment award for a workers compensation case to appeal to the Compensation Appeals Board. The law now states, "that the commissioners findings shall be final." This would be removed if this bill is passed. Commissioner Flynn testified before the committee in total support and he said that it was, "overlooked", in the revamping of the system and that it will, ultimately, save money and time because at the present time, all cases must go to the Supreme Court for appeals.

SENATOR DISNARD: Senator, is there grandfathering in this, any pending or past decisions by the commissioner, can they be reopened?

SENATOR HOLLINGWORTH: I don't believe that was addressed, Senator. I think that this would only be new appeals because it would be those that would be made, rather than now having to go to the Supreme Court, they can now go before the appeals, so I would think that it would be any new decisions.

SENATOR DISNARD: Thank you.

Adopted.

Ordered to third reading.

SB 106, an act relative to a northeast interstate dairy compact. Interstate Cooperation. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: This bill establishes a northeast interstate dairy compact. The compact allows participating states to regulate the price which northeast dairy farmers receive for their products. In recent years, farmers cost have gone up but the prices haven't. Where there once were 2,500 dairy farms in New Hampshire, there are now 400. The price is now federally controlled and the midwest can produce much more cheaply. So now there are price swings in some regions such as ours that are disadvantaged. This bill establishes an interstate commission with the authority of pricing of milk and establishes a floor price only for the fluid

milk which is for drinking. And it also keeps milk production local, good for the consumers as well. The compact is constitutionally authorized, means for New Hampshire to provide effective price relief and stability to our dairy farmers. It is being considered in Vermont and Maine and the other New England states as well. I urge support of the bill.

SENATOR CURRIER: Senator Cohen, in your explanation it almost sounds like price-fixing. Where they are regulating the price of milk, what makes this not illegal?

SENATOR COHEN: It is not illegal. Right now there are federal price supports and it is established at the federal level. It is right now . . . individual efforts at price controls have been frustrated by the interstate commerce clause, but this compact overcomes this obstacle. It has been . . . it really isn't price controls, it is working together as a region to be able to compete with other areas. The market would dictate prices, they can't raise prices accessibly, the market forces themselves would limit any price hikes.

SENATOR CURRIER: So what you are telling me then that there is no conflict in terms of price fixing where they are setting their prices collaboratively?

SENATOR COHEN: No. It is perfectly legal under federal law.

SENATOR COLANTUONO: I am speaking as Vice Chairman of the committee against the bill, and ask that the motion of ought to pass be defeated. I rise, Mr. President, to speak for the free enterprise system that isn't in such a healthy shape these days. I also rise to speak in favor of all of the consumers out there who we represent who buy and drink milk. Including, Mr. President, the people that many people in this body want to protect the most, like the poor, and the elderly, and children, who rely on milk and drink it a lot. What this bill will do is to clearly fix prices. That is exactly what it is designed to do. It is designed to fix prices even over and above higher than the federal milk price support level that has been in effect since 1937, which has been a dismal failure. Basically, this bill is just another way to milk the public, literally and figuratively, Mr. President. I wasn't attempting to make a pun there, but that is exactly what this bill does. I mean, when I read this bill I thought that I was reading legislation from pre-revolution, eastern Europe. I mean it sets up this board and it has section nine on page 10 of the board, it gives the board the power to set the price. You can read it, Senator Currier, on page 10. It is a clear violation of the free enterprise system. It is blatant price fixing which would put anyone else in the private sector who tried to do this, in jail. It is totally illegal for states to get together to . . . or for any state to try to establish the price on a certain item that flows in interstate commerce. The only way that we can get around this is to have a compact under the constitution. This bill is designed to set up a compact of all the northeastern states, not just New England, all the way from Maine down to even North Carolina, so that the whole eastern third of the country would be operating under this and would have milk prices fixed to this level. I think it is just an abomination. It is basically a tax on the price of milk designed to transfer money from consumers to the milk producers. I would just like to read a quick paragraph from a recent best selling book called, "The Government Racket". It talks about the federal milk price subsidy. It says that it was a new deal operation which in its time was needed and successful. It kept millions of dairy farmers from going broke and increased milk production, but today it is stupid. It has cost the government $20 billion in subsidies, and that is us, the taxpay-

ers, and raised milk prices to consumers $40 billion. So we are paying for it twice. The natural law of economics have ruled a business anyway and the 5 million dairy farms have virtually disappeared despite subsidies or even because of the way that they favored big producers, which is exactly what this bill does. In their place, there are only 220,000 dairy farms, and the number drops each year as the herds get bigger and each cow gives more milk, courtesy of modern machinery and breeding. The government, and he is talking about the federal government, but I am talking about the state governments, know nothing about dairy farming and shouldn't be in the business. If they got out of it, farmers will produce just enough milk to sell at the right price, and the taxpayers will save $1 billion each year. So I would urge a no vote on behalf of our constituents who are the consumers of milk.

SENATOR DISNARD: I think the Senate should understand what Senator Colantuono left out. The price of milk in this area now is established by the federal government on what milk sells for in Wisconsin. I think that we should all realize that in the 90 percent, I think that it is 94 or 95 percent, of all of the milk that is produced in Wisconsin goes for cheese and other types of uses. So therefore, the federal government establishes the price which the Wisconsin farmers are interested. We are penalized, the farmers in this area. Now I recognize the questions and the reason for Senator Colantuonos speaking. He also didn't say that there wasn't any opposition at that time at the hearing. Also, he didn't indicate that Vermont and Maine have already agreed to become members of this compact. New York is now looking at it, as the other New England states. It is to protect the farmers but he talked about fairness. Is it fair whether the New Hampshire farmers or the New England farmers, who depend upon a price settled by the federal government for milk produced in Wisconsin which they don't use, hardly the market at all for that milk?

SENATOR PODLES: Senator Colantuono, in addition to establishing a commission in this bill, SB 106, isn't it true that they not only have the price fixing, but they also have access to all of the books and records and also full access to the premises of that farm? Would you agree?

SENATOR COLANTUONO: Well that is why I thought that I was in eastern Europe when I read the bill.

SENATOR BARNES: Senator Colantuono, you made mention of the fact that you are a member of the committee that heard this bill?

SENATOR COLANTUONO: Yes.

SENATOR BARNES: I see on this bill that it was requested by the Department of Agriculture?

SENATOR COLANTUONO: Yes.

SENATOR BARNES: Did the Commissioner come in and give testimony on this bill in front of your committee?

SENATOR COLANTUONO: Yes he did.

SENATOR BARNES: But he didn't satisfy some of your questions that you are raising here today?

SENATOR COLANTUONO: No he didn't.

SENATOR BARNES: That surprises me. I have heard him on several occasions and he has always satisfied me.

SENATOR SHAHEEN: Senator Colantuono, would you agree that our newly elected conservative republic an governor is an advocate of the free market system?

SENATOR COLANTUONO: Yes, I absolutely agree with that.

SENATOR SHAHEEN: And am I correct that our newly elected conservative republican governor is supporting this bill and the compact along with other New England Governors?

SENATOR COLANTUONO: I am not sure, Senator, how authorized I am to discuss recent discussions with the Governor's Office. It was true that a news report came out in which he stated that he was going to back this, I am not totally sure that is the case right now. I think that I can say that a dairy farmer, a very prominent dairy farmer who works in the Governor's Office is not in favor of this bill.

SENATOR SHAHEEN: Do I understand you to agree then, Senator Colantuono, that the Governor is then in support of the compact?

SENATOR COLANTUONO: I am not certain at this time of the Governor's position on this.

SENATOR SHAHEEN: And that we have a letter to that affect?

SENATOR COLANTUONO: I am not certain at this time, what the Governor's position is.

SENATOR W. KING: Briefly, Senator Shaheen took the wind out of my sails. But I understand and appreciate that my colleague Senator Colantuono is udderly opposed to this bill, but I rise to defend the honor of Governor, Steve Merrill. Governor Merrill two weeks ago participated in a session with the New England Governors to discuss this very matter. All of the facts were layed out to them in terms of the milk prices and the ability of the farmers to earn a living and to survive, and thus keeping land not only in productive farm use, but open land as well. Governor Merrill voted with all of the rest of the New England delegation and all of the rest of the Governor's in New England to support this compact.

SENATOR BLAISDELL: Mr. President and members of the Senate, I rise in support of this piece of legislation. I really would want to defend my friend, Mr. Bill Bartlett, I didn't realize that he was a farmer, but I take a little bit of concern about what Senator Cohen said when he said that there was over 400 and something farms left in the state of New Hampshire. I find that there are really about 222 or 225. I talked with the Commissioner of Agriculture, Steve Taylor who I think probably is one of the finest department heads that this state has ever had. He convinced me. I would hope really that you would vote for this bill. It is a good piece of legislation. Let's get on with our work.

SENATOR COLANTUONO: Senator Disnard, when you stated that the federal prices set, based on Wisconsin, Senator, isn't it true that the price, fluctuates and increases the further one gets from Wisconsin so that farmers on the west coast and farmers on the east coast, like New Hampshire farmers, get substantially more for their milk than farmers in Wisconsin, is that the case?

SENATOR DISNARD: I appreciate you asking me that question because it reminds me of, at the testimony, the group that you are talking about is also interested in starting a compact such as this, so there must be some concerns with the west coast dairy producers that the Wisconsin dairy farmers are establishing the price of the milk that they don't use.

So I would have to say that it fluctuates in the summer as you heard in the testimony, because the cows produce more freely in the summer and it is higher in the winter when the cows are not producing as much milk.

SENATOR COLANTUONO: Thank you.

SENATOR PODLES: Senator Disnard, I understand that this is going to help the farmers, but could you tell me what it is going to do to the consumer?

SENATOR DISNARD: Yes, ma'am. I heard that from 2500 farms down to 225, if it gets much lower there will not be an adequate amount of milk for the consumers in this area and therefore they will be paying higher prices because it will be imported from other areas.

SENATOR PODLES: Do I understand it correctly that the consumer will have to pay more for milk?

SENATOR DISNARD: I am understanding . . . you heard my answer ma'am, I will repeat it. We are down to 225 farms and it could go down. And if we go down to less, there will be less milk produced and the milk will be imported from outside of New England; and thus, yes. The people you speak about and are so concerned about will be paying more for milk.

Senator Russman moved the question.

Adopted.

Question is on the committee report of ought to pass.

Adopted.

Question is on the motion of ordering to third reading.

A roll call was requested by Senator Colantuono.

Seconded by Senator Wheeler.

The following Senators voted Yes: Lamirande, W. King, Fraser, Lovejoy, Disnard, Roberge, Blaisdell, Baldizar, Pignatelli, McLane, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Currier, Wheeler, Colantuono, Podles.

Yeas: 18 - Nays: 4.

Ordered to third reading.

SB 175-FN, an act relative to a compact between New Hampshire and other states and probationers and parolees. Interstate Cooperation committee. Ought to Pass with Amendment. Senator Shaheen for the committee.

1533B

Amendment to SB 175-FN

Amend RSA 651-A:25, III-a as inserted by section 2 of the bill by replacing it with the following:

III-a. Notwithstanding any other law to the contrary, any hearings, including final revocation hearings, to which a probationer or parolee is entitled prior to incarceration or reincarceration for a violation of probation or parole may, at the discretion of the court or parole board involved, be held before the appropriate court or parole board of the receiving state. In such event, the appropriate court or parole board of the sending state shall transfer jurisdiction of the case to the appropriate court of the receiving state.

SENATOR SHAHEEN: This bill is a result of a study committee on parole eligibility that met over the summer and what it allows us to do with those states with whom we have a probation and parole compact. When somebody is taken into custody here from another state for violating probation or parole, we can detain them and actually hold the hearing here in New Hampshire. The amendment addresses the second page of the bill, in line one and line three, the bill should read, "at the discretion of the courts or parole board", and the same is true in line three, "the appropriate court or parole board", should have been included on that.

SENATOR J. KING: Senator Shaheen, once the hearing is held, and the disposition might be that they go to jail or go to prison or somewhere, is that confinement done in New Hampshire or do we send them back to the other state?

SENATOR SHAHEEN: No, we send them back to the other states.

SENATOR J. KING: Thank you.

Amendment adopted.

Ordered to third reading.

SB 66, an act prohibiting the distribution of all forms of birth control to minors in public schools without parental consent. Public Affairs committee. Majority Vote: Ought to Pass with Amendment. Senator Roberge for the committee. Minority Vote: Inexpedient to Legislate. Senator Pignatelli for the committee.

1534B

Amendment to SB 66

Amend the title of the bill by replacing it with the following:

AN ACT
prohibiting the distribution of all forms of
birth control to minors in public schools.

Amend the bill by replacing section 1 with the following:

1 New Section; Birth Control Distribution Prohibited. Amend RSA 200 by inserting after section 38 the following new section:

200:38-a Distribution of Birth Control to Minors Prohibited. No form of birth control shall be distributed in any manner to minors attending public schools. For the purpose of this section, "minor" means any person 18 years of age or younger.

AMENDED ANALYSIS

This bill prohibits the distribution of any and all forms of birth control to minors in public schools.

SENATOR PIGNATELLI: I rise in opposition of this bill and urge inexpedient to legislate. My opposition to this legislation is not based on the content of the bill, rather it is rooted in my strong belief in local control and its ability to institute rules which accurately reflect the views of the community. Our state is comprised of over 200 different municipalities each with its own unique needs and concerns. On any given night, school boards, planning boards, city councils and selectmen meet and when they meet, members of their communities and their friends and neighbors voice praise or concern for the matters before them. Nowhere else can you find a government as close to the people that it is established to serve. Many issues before us have an effect on our local communities,

but I would suggest to you that few issues would impinge on the unique morals of each community to the extent that this legislation will. There is no right or wrong in this debate, rather there are two compelling points-of-view. What may be considered right in one community may be wrong in another. If then you agree that local government is most attuned to the needs and wants of its community, you too will oppose the motion, you too will vote inexpedient to legislate. By doing so, you will displace this decision in the hands of those who best understand their community. You will enable a thorough debate at the local level by those who will be most affected. You will be granting to our citizens, the right to determine what they, not us, is appropriate for them and their children. Already, at least two communities have adopted policies on the issue contained in this legislation. They have charted the course they will take. The citizens have and will continue to have the opportunity to voice support or opposition for their actions. We often point with pride to our system of local control, and rightly so. Now is not the time to remove from local discussion an issue of such importance. Again, I would ask that you vote inexpedient to legislate on this bill and stand ready to move that the bill be ordered inexpedient.

SENATOR ROBERGE: Mr. President and members of the Senate, this bill as originally written prohibited the distribution of all forms, of birth control, to minors in public schools without parental consent. The committee decided after hearing much testimony that we would like the amendment of prohibiting birth control, any form of birth control in public schools and that is the amendment that I put before you today. We feel that permitting these types of devices to be given to our children in school sends a wrong message, and I would urge ought to pass as amended.

SENATOR SHAHEEN: Senator Roberge, does this mean that in sex education classes, it would mean that it would be illegal to talk about any forms of birth control since some of them . . .

SENATOR ROBERGE: No.

SENATOR SHAHEEN: And why is that? Because as I read this bill, it reads to me as if they were talking about methods of birth control in a sex education class, that would be distribution of birth control information and therefore, would be prohibited.

SENATOR ROBERGE: I don't see where you are reading from, Senator. I am reading off of the same form that you are and all that it talks about is distribution prohibited or distribution with parental consent and then we just asked for higher standard of no distribution at all. But I don't see anything about education at all in the bill or in the menu. It just isn't there.

SENATOR SHAHEEN: It says that no form of birth control should be distributed. Well, it seems to me that this would make discussions of methods of birth control that do not involve physical materials, would then therefore be prohibited which would mean that sex education, essentially, would be prohibited in local schools?

SENATOR ROBERGE: I really think that is reaching rather far and that is not really what the bill says.

SENATOR SHAHEEN: I understand that might not be the intent of the bill, but in fact, it seems to me, that could be an interpretation by local school districts?

SENATOR ROBERGE: Well it seems to me, that no form of birth control shall be distributed in any manner to minors attending public school without written consent of the parent or legal guardian. That is what it originally said. I do not read, written material into that. I don't. That is not the way that I read it, and I don't even understand it to say that. I think that if we intended it to say that, it would say that.

SENATOR SHAHEEN: But would you agree that there are some forms of birth control that are nontangible?

SENATOR ROBERGE: I don't know.

SENATOR COHEN: I believe the impetus for this measure comes from the city of Portsmouth where the Portsmouth High School, after much discussion by a committee involving many different people, many different segments of our society, it was decided that condoms would be made available, not but distributed, made available. They are available only through the school nurse, and they are available through the school nurse only after a 15 minute lecture which covers abstinence, education, proper use of condoms, the implications, sexual involvement and the possibility of AIDS and pregnancy. Every parent of a high school student in Portsmouth was sent a form in which they could state that they did or did not want their child to receive condoms. Those records are kept on file by the school nurse. Those parents who objected to their children having condoms available, those children will not get the condoms. Of the 900 parents who sent back the forms, only 10 percent responded that they did not want their children to receive condoms. That is a referendum on the issue and by the population that it directly effects. I would also like to site an editorial in the Portsmouth Herald. "Live free or die, just do it our way". The state should butt out of local school debates. It was a local decision, this was in the editorial, made by a local elected board, advised by a committee representing several different facets of Portsmouth citizenry. Educators, medical professionals, students, parents and clergy. These decisions should rest with the people who pay to support local school districts through the school boards that are elected to represent them. This may not apply to all communities, but as the editorial says, it is their decision, not the decision of politicians in Concord who don't know the difference between trying to save a life and trying to run one. I hope that we vote inexpedient to legislate on this bill and leave it up to the communities to decide.

SENATOR BARNES: I rise in favor of SB 66. I would like to, number one, address Senator Shaheen's comment. If in fact that were in this bill or if I understood it to be in this bill, as far as the sex education goes, I wouldn't be standing up here and I would be voting against it. I personally believe that sex education in our schools is very, very important. I also agree with my good colleague over there from district #1. We have 242 cities and towns and I will have to tell you that I am on my fifth year up here in Concord. TAPE INAUDIBLE that I have been made aware of. The committee received and they are on file in our office, the Public Affairs office, over 1,150 petitions in favor of this bill. As I looked around today up there, I didn't find a folder that said against. Obviously there are some against it, but I don't see the hue and cry from our 242 cities and towns, the people out there are good people sending something in to say no. Now I would like to talk a little bit, just very briefly about the city of Portsmouth. The testimony was long and we heard from professionals discussing all sorts of things that I am not going to go into here today

because I am not sure that I really understood 100 percent of some of the things that some of these professions were telling me; however, I heard that the city of Portsmouth had not gone into the harbor because this type of thing had happened over in Portsmouth. One of our Representatives told us that, and I was very happy to hear that the city of Portsmouth didn't go into the harbor because of this bill, because I like the city of Portsmouth; however, while at lunch the other day I ran into a gentleman, the honorable Charlie Vaughn who is a Representative next door, more importantly in this matter, he is a member of the Portsmouth School Board. I said, "Charlie, what happened over there, are you one of the five or one of the four"? For your information, the vote was five to four in the city of Portsmouth on the school board, it was not nine to nothing, it was five to four after much heated debate. I asked Charlie if he would kindly sit down and write a letter and send documentation to us which he did, he sent it to Senator Roberge. Just to set things straight, when we hire a superintendent of schools and all of us have probably been involved with that in our own towns or somewhere else, that person we put a lot of faith in, as a rule. Well guess what? The superintendent of the Portsmouth School district over there was against the distribution of condoms in Portsmouth, that is a fact here, and I believe that it's on record. And I have a hunch that my fellow Senator from Portsmouth could probably back me up on that. True, that it was five to four, but the superintendent of that school district, the man that the folks put in charge was against it. Thank you very much.

SENATOR LOVEJOY: I rise in support of this bill. I want to pass on to some of you that didn't have the opportunity to listen to the very good testimony and the expert testimony that was presented to this committee. I think that it is something that we all should consider because we imply with the distribution of condoms or other devices to our school children that there is such a thing as safe sex. We say to them either by implication or by words that this is a method for safe sex. The testimony that we heard told us that there is no such thing as safe, promiscuous sex. We heard testimony that the incidence of pregnancy and the incidence of passing on venereal disease with the use of condoms is quite high. I can't remember the percentages but it staggered me to know that even with the use of condoms the incidence of pregnancies and the incidence of passing venereal diseases is quite high. We heard testimony, expert testimony that the microorganism that passes on the disease of AIDS is some 50 times smaller than the pores in a condom. I never thought of that, some 50 times smaller. So we heard testimony that said that this isn't a fail safe method of protection, and yet we are implying that if we pass out condoms to our children that they are protected. I would ask you, is there some liability that might be incurred by the school district that passes on a device of safe sex and in fact that sex was not safe? Is there a liability to be incurred by that school district? Well, I think there might be. I think that you might agree with me that there might be. We heard testimony that the only protection in the case of a male member in a so called sex situation with a female member who might be infected with the AIDS virus, the only protection that member would have is if he wore a double pair of rubber gloves, we heard that testimony, expert testimony. It impressed me. We heard testimony that said that by passing condoms on, or other devices on to our children in our public school system, we are implying to them, that promiscuous sex is okay as long as you are protected. This Senator doesn't believe that promiscuous sex is okay or that is the message that we should be passing on to our school children. The communi-

ties are looking to this state Senate for some guidance and it is being watched very carefully as to how we handle this issue. I can't believe that this state Senate wants to send a message to our state and to our children that promiscuous sex is okay if you are protected. I can't believe that this Senate wants to pass on the message to the communities or to the state, or to our children, that perhaps you believe you are protected when in fact you are not protected at all. Thank you. I urge you to pass this important piece of legislation. Thank you.

SENATOR HOLLINGWORTH: I would just like to state that last year we heard pretty much the same debate and the issue was that we determined then that the place that the decision should be made is at the local level where the parents can have direct involvement and can be told the exact facts that we are hearing today about condoms. We should not as 24 Senators, be dictating to a community what they should do and what they should believe. That is precisely why we passed the legislation that we did, empowering the communities to make those decisions for themselves. This is true democracy, and true right for people to be able to speak. One further statement that I would like to make is that I do interpret from the amendment here, it says, "no form of birth control shall be distributed in any manner", any manner means to say something, to take and give a piece of paper or an article. I believe that the way that this reads, that it would actually be interpreted to be unable to tell a person that they should abstain. That is how I would read this amendment. I think that it goes far beyond what the sponsors would intend, and I would ask you not to support it, and to give the right to the parents to make those decisions at the local levels with their school boards who they can vote in and out of office and they hear direct comments from.

SENATOR WHEELER: Senator Lovejoy and Senator Barnes have covered most of the material that I would like to speak to, so I just leave the Senate with this question: Would you want your child to have safer sex, sex with a condom with let's say, a person infected with AIDS like Magic Johnson, without your consent or without knowing about it? Please support this bill and vote it ought to pass, thank you.

Senator W. King moved to have SB 66 an act prohibiting the distribution of all forms of birth control to minors in public schools without parental consent, laid on the table.

A roll call was requested by Senator Wheeler.

Seconded by Senator Blaisdell.

The following Senators voted Yes: Lamirande, W. King, Fraser, Currier, Blaisdell, Baldizar, Pignatelli, McLane, Russman, Shaheen, Hollingworth, Cohen.

The following Senators voted No: Lovejoy, Disnard, Roberge, Wheeler, Colantuono, Podles, Barnes, J. King, Bourque, Delahunty.

Yeas: 12 - Nays: 10

Adopted.

LAID ON THE TABLE

SB 66, an act prohibiting the distribution of all forms of birth control to minors in public schools without parental consent

SB 82, an act returning certain state-owned land to the town of Belmont. Interstate Cooperation committee. Re-referred To Committee. Senator Barnes for the committee.

SENATOR BARNES: The committee, on hearing SB 82, we heard a lot of testimony. Folks from Belmont and vicinity were down to see us and we wanted it to be known that we have sympathy for the situation up there. We do think that has to be addressed. During the testimony Leon Kenison, the Assistant Commissioner of DOT came in to give testimony. And his testimony was that there was a study that was still underway that would be completed shortly. The committee felt that in fairness to all of the work that has been done of this study that we should hold off and re-refer it and bring it back next year after the study has been completed. But, we want to make sure that the folks in Belmont know that we had great sympathy for their situation.

SENATOR W. KING: Senator Barnes, so if I understand it, the concern of the committee is that the highway study that is ongoing might in some way be affected by returning this land that the state has had for 20 years?

SENATOR W. KING: Absolutely correct, Senator.

Senator W. King moved to have SB 82 an act returning certain state-owned land to the town of Belmont, laid on the table.

Adopted.

LAID ON THE TABLE

SB 82, an act returning certain state-owned land to the town of Belmont.

SB 35-FN-A, an act relative to a fund for organ transplantation and transferring responsibility from vocational rehabilitation to the division of human services and making an appropriation therefor. Public Institutions, Health & Human Services committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: This bill has been three times before this body. All good sense shows that we should pass it and yet it carries a price tag of $.5 million. And for that reason the first time it was sent to study and the second time, we lost it over in the House Appropriations. It is a very simple situation. We have had two heart transplants, three lung/heart transplants and a bone marrow transplant in the last two years, and they have cost over $1 million. Because the state has not appropriated that money, we have taken the money from a vocational rehabilitation fund and from money that is meant to go for simple medical procedures, and so that people can go back to work. There are now 3,700 individual cases backlogged in vocational rehabilitation. People waiting for a wooden leg, a hearing aid, some sort of a prosthesis that would allow them to then become productive citizens. And because of a loophole in the law, New Hampshire is the only state in the nation that has used that voc rehab money for organ transplants. In a more honest world, we would say that we cannot do the organ transplants, but what we have done is passed these very difficult political decisions over to Charles Marston in the Division of Education for them to decide whether 300 people should receive a simple prosthesis or one person should get a heart/lung transplant. We are going to try again to put this program where it belongs, in the Division of Public Health. There they will make those difficult decisions with criteria developed by the vocational rehabilitation criteria. But it should be done, and I would ask that you send this bill forward to Senate Finance

and perhaps we can start to help those people who are in need of small services from the state, over 3,000 instead of grandstanding with these large medical procedures.

Adopted.

Referred to the Division on Finance (Rule #24).

SB 44, an act adding to the membership of the emergency shelter commission. Public Institutions, Health & Human Services committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: The committee requested that SB 44 be ought to pass. All that it does is to add two more members to the committee. They are presently one public member. The Governor will now be able to appoint three public members. I think that is a good idea, and I think that it is a breath of fresh air.

Adopted.

Ordered to third reading.

SB 47, an act relative to prosecuting petitions under the uniform reciprocal enforcement of support act. Public Institutions, Health & Human Services committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: This was a mistake in a bill that was passed in the last session. It is merely an incorrect date. It should be 1994 instead of 1993. It has caused some problems within the counties and they would like to have it corrected.

Adopted.

Ordered to third reading.

SB 64, an act extending the reporting date of the committee to study head injury cases. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 64 extends the reporting date of the committee established to study head injury cases. The committee needs more time at this time to accomplish what they want to do. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

SB 125, an act changing the name of the task force established for women at risk for alcohol and other abuse during pregnancy. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: You know with all of the issues that we have been dealing with today this really is very simple housekeeping. It is changing one word, the word "prenatal" to "perinatal" which fits what the scope of what the task force is. It also adds two members to the existing committee and that is the gist of the bill.

Adopted.

Ordered to third reading.

SB 141-FN-A, an act removing the drug and alcohol treatment center, boot camp and halfway house from the Laconia developmental services building and selecting a consultant and establishing a committee to study the corrections system and making an appropriation therefor. Public Institutions, Health & Human Services committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: SB 141 establishes a committee to study the long-term needs of our correctional system. It further calls for the closure of the prison facility by July 2, 1995 and removing the drug and alcohol center from the grounds. The prison in Laconia was to exist only until 1997 and the statute was passed two years ago. The prison space study committee, which has $150,000 appropriation to hire a public consultant who shall conduct a prison space study. This shall be completed in December of 1993. The committee shall conduct a hearing and find out what the current space is available at the present time, used to house prisoners, an inventory and review of other state owned buildings and property and to make recommendations to the legislature. The study committee will be two Senators, two Representatives, and a member appointed by the Governor. It further shall hold public hearings to identify other facilities usable as a location for housing prisoners. The current Laconia prison will be transferred to the Department of Administrative Services in the area known as the Governors Park to the Department of Resources and Economic Development. This piece of land would be a most valuable piece of land available to be used in a much more appropriate fashion than its current use. If you haven't visited the location, I would advise you to do that. This would also allow for planning for the future. The Commissioner of Corrections has said on the hearing of this bill, that even with the Laconia site, when that is maximized out, there will not be enough space to handle the prison population. This here would take care, looking at the whole grand picture of what is needed and not just for the next two years, but in a far distant future. The committee, I hope, will find space away from concentrated populations and with enough land to grow without the due process necessary and looking for new sites. One would also feel more comfortable with a family orientated state park which they are planning in Laconia in a much more comfortable setting without the prison being their next door neighbor. The Laconia prison dealt with an immediate problem and the legislature set a time limit to expire and to be renewed. Whereas the facts seem to show that the Laconia site will not adequately handle future prison populations. I suggest passage of SB 141 so that a study can be done that will hopefully provide the lasting answer to current needs and an area to expand if and when needed. Thank you very much.

SENATOR FRASER: Mr. President, I don't think that there is anyone in this room that doesn't realize how important this legislation is to me. It is a battle that I have been fighting now for at least two or three years. It is an extremely important bill for the citizens in the lakes region who feel that this was not the right place to site this shock incarceration program. I am not going to delay the process any longer. I think that everyone in this room realizes that this is a good bill and I would urge its adoption.

SENATOR BLAISDELL: Mr. President and members of the Senate, as Chairman of the Senate Finance Division, I waive sending this bill down to us in Finance. I know that there is a problem with the consultant fee, I think that it can go over to the House and the work can be done. If we

don't agree with the money that is involved in it then I think that we should go over to a Committee of Conference. That is the way that I think that we should handle it, Senator Fraser.

Adopted.

Ordered to third reading.

SB 142-FN, an act intercepting the sweepstakes winnings of delinquent child support payors. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 142-FN intercepts the sweepstakes winnings of delinquent child support payors. This should increase the child support payments the state can collect. It is estimated that $5,000 to $10,000 can be collected. This system works in Vermont. The Child Support Enforcement and the Sweepstakes Commission will work together to develop a process for implementing this bill. They will use the existing computer system and install a terminal at the sweepstakes office. No additional staff will be required. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

SB 11, an act allowing 15-year-old persons to bus tables in dining rooms and lounges. Ways and Means committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

1569B

Amendment to SB 11

Amend the title of the bill by replacing it with the following:

AN ACT

allowing 15-year-old persons to bus tables in dining rooms.

Amend the bill by replacing section 1 with the following:

1 Allowing Persons 15 Years of Age to Bus Tables in Dining Areas. Amend RSA 179:23, II to read as follows:

II. An on-sale licensee may employ any person not less than 18 years of age to serve or otherwise handle liquor and beverages while employed as a waiter, waitress, bartender, or hostess in a licensed premise. Minors not less than [16] ***15*** years of age may be employed in dining areas and ***minors not less than 16 years of age may be employed in*** lounge areas to clean tables, remove empty containers and glasses and assist in stocking. A person at least 18 years of age shall be in attendance and be designated in charge of the employees and business.

AMENDED ANALYSIS

This bill allows persons 15 years of age and older to bus tables in dining rooms.

SENATOR BLAISDELL: SB 11 by the way, Mr. President and members of the Senate, came in originally for 15 year olds to bus tables in dining rooms and lounges. The amendment on page 27 just takes lounges out of there. The committee recommends ought to pass.

SENATOR BARNES: Senator Blaisdell, was it discussed in your committee during the hearing on this, the very limited hours that are allowed for 15 year olds to work, such as three hours, such as being out of work by 6:00 in the evening?

SENATOR BLAISDELL: Absolutely, Senator. There was a lot of discussion on that; in fact, I think it was Dennis Murphy that came in and spoke in length about the hours that these children are working or these 15 year olds, they are pretty young still, but there was a lot of concern about that, so we did address it.

SENATOR BARNES: Your committee was of the unanimous vote that came out on the Senate floor?

SENATOR BLAISDELL: Yes, to allow them to bus tables in dining rooms, but not lounges.

SENATOR BARNES: Would you believe that I don't think that it does a darn thing because of the limited hours that these folks can work?

SENATOR BLAISDELL: Well, you're possibly right. We wanted to make sure that it was clear in the bill, that's all.

SENATOR BARNES: Thank you.

Amendment adopted.

Ordered to third reading.

SB 12-FN, an act creating a new category of liquor license to allow a warehouser to receive, warehouse and ship liquor, wine or beverages or any combination of liquor, wine and beverages, and adding a new fee for certain wine and liquor vendors. Ways and Means committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President and members of the Senate, all that this bill does is, it is really a housekeeping bill by the Liquor Commissioner. It adds a new fee for wine and liquor vendors who sell more than 10,000 cases per year, and it increases revenue to about $185,000. The committee urges ought to pass.

Adopted.

Ordered to third reading.

SB 14, an act relative to package deals sponsored by liquor licensees. Ways and Means committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: This is just another housekeeping bill by the Liquor Commission. It permits a licensee to promote a package deal in which a single price is charged for any combination of lodging, food, beverages and liquor. The committee urges ought to pass.

Adopted.

Ordered to third reading.

SB 205, an act limiting spotting for game. Ways and Means committee. Ought to Pass with Amendment. Senator Disnard for the committee.

1529B

Amendment to SB 205

Amend the title of the bill by replacing it with the following:

AN ACT

expanding the time during which a person is prohibited from using a light to locate wild birds or wild animals.

Amend the bill by replacing all after the enacting clause with the following:

1 Illegal Use of Light to Locate Animals; Prohibition Expanded. Amend RSA 208:8-a, I to read as follows:

I. Any person who deliberately uses an artificial light during the period from [October 1] September 1 through December 31 to illuminate, jack, locate or attempt to locate wild birds or wild animals shall be guilty of a violation.

2 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill expands the time during which the deliberate illumination of wild birds and wild animals is prohibited.

SENATOR DISNARD: The bill is now with the amendment on page 27 of the calendar. The amendment does two things; it corrects the statute which was listed in the original bill under the inappropriate statute, and it changes and adds one month, the month of September to the present law of October, November and December which allows people to illuminate or spot deer to conform with the present statutes. Some problems: Right now there are some landowners who do not want to shut or post their land and they are concerned that during the month of September which coincides with a portion of the bow hunting season that they are coming in the evening and spotting deer with their flashlights.

SENATOR LAMIRANDE: Senator Disnard, is this in essence, jacking deer?

SENATOR DISNARD: No, ma'am. Right now the present law allows individuals, hunters, during the month of October, November and December during certain hours to go out and spot deer, not shoot them. This prohibits them, I am sorry, I explained it wrong. I appreciate your being alert, nobody else caught it. Thank you very much, it prohibits it.

Amendment adopted.

Ordered to third reading.

RESOLUTION

SENATOR COLANTUONO: At the request of Senator Fraser who submitted the bill concerning increasing the limit of the small claims. To refresh the members recollections, we voted that inexpedient because of the constitutional problem. This resolution simply requests the Bar Association to examine the issue of increasing the maximum amount in controversy for small claims actions to $5,000. Actually Matt Epstein has already said that they are willing to do it, but Senator Fraser wanted to have this resolution on record and informally ask them to do it, so we request your support.

Senator Colantuono offered the following Senate Resolution:

SR 4

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

requesting that the New Hampshire Bar Association
examine increasing the maximum amount
in controversy for small claims
actions to $5,000.

Whereas, the district courts are overburdened with cases; and

Whereas, many of these cases could be resolved in a more expeditious and cost-effective manner through the small claims process; and

Whereas, currently the maximum amount in controversy for small claims actions is $2,500; and

Whereas, a variety of legal and constitutional issues may be involved in increasing the maximum amount in controversy for small claims actions to $5,000; now, therefore, be it:

Resolved by the Senate:

That the New Hampshire Bar Association is requested to examine the issue of increasing the maximum amount in controversy for small claims actions to $5,000 and to submit a report on its examination of this issue to the senate president; and

That a copy of this resolution shall be delivered by the senate clerk to the president of the New Hampshire Bar Association.

SR 4 is adopted.

ANNOUNCEMENTS

SENATOR BARNES (Rule #44): I made a mistake during the previous testimony on SB 66. I put in my testimony, my colleague from district one and that just goes to show you that I don't know my districts yet, it was actually district 11 that I was referring to. Actually an amendment to that is that it was my colleague from district #13. I will get these districts down pretty soon.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourned until Thursday, February 18, 1993 at 12:00 noon.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 5, an act repealing article 6 of the uniform commercial code on bulk sales and making conforming amendments.

SB 9, an act adopting the uniform commercial code Article 2A on leases and conforming amendments to Articles 1 and 9.

SB 10, revising articles 3 and 4 of the uniform commercial code and adopting article 4A of the uniform commercial code.

SB 11, allowing 15-year-old persons to bus tables in dining rooms.

SB 12-FN, an act creating a new category of liquor license to allow a warehouser to receive, warehouse and ship liquor, wine or beverages or any combination of liquor, wine and beverages, and adding a new fee for certain wine and liquor vendors.

SB 14, an act relative to package deals sponsored by liquor licensees.

SB 38, an act protecting against unauthorized access to teacher certification records.

SB 39, making a technical correction in the enhanced 911 system law and specifying a 4-year term for the executive director of the bureau of emergency communications.

SB 43, an act relative to the state board of auctioneers.

SB 44, an act adding to the membership of the emergency shelter commission.

SB 47, an act relative to prosecuting petitions under the uniform reciprocal enforcement of support act.

SB 64, an act extending the reporting date of the committee to study head injury cases.

SB 85, an act relative to the composition of the wetlands board.

SB 92-FN, an act to rename the school for lifelong learning of the university system of New Hampshire, the college for lifelong learning of the university system of New Hampshire.

SB 106, an act relative to a northeast interstate dairy compact.

SB 125, an act changing the name of the task force established for women at risk for alcohol and other abuse during pregnancy.

SB 132, relative to the Revised Statutes Annotated, and creating a committee to study the rulemaking process.

SB 133, an act relative to the disciplinary, investigative and subpoena powers and the rulemaking authority of the board of chiropractic examiners.

SB 134, an act establishing a committee to study the need for reasonable standards and procedures for contracting services by the state.

SB 141-FN-A, an act removing the drug and alcohol treatment center, boot camp and halfway house from the Laconia developmental services building and selecting a consultant and establishing a committee to study the corrections system and making an appropriation therefor.

SB 142-FN, an act intercepting the sweepstakes winnings of delinquent child support payors.

SB 175-FN, an act relative to a compact between New Hampshire and other states and probationers and parolees.

SB 205, expanding the time during which a person is prohibited from using a light to locate wild birds or wild animals.

SB 223-FN, an act allowing appeals of permanent impairment awards to the compensation appeals board.

HB 234, an act relative to the Winnisquam regional cooperative school district and the Tilton and Northfield union school district.

Senator Disnard moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Thursday, February 18, 1993 at 12:00 noon.

Adopted.

Adjournment.

February 18, 1993

The Senate met at 12:00 p.m.

A quorum was present.

The prayer was offered by the honorable Senator, David Wheeler.

Father, give us wisdom, fairness, and charity as we consider the issues before us today. Please bless the work of this Senate. Amen

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

Lord our great protector, as these good women and men of varying convictions wrestle together in this place about condoms and seat belts and kindergarten and blaze orange clothing and small water craft, remind us all of the great responsibility we have to you, to ourselves and to one another as we struggle to figure out when it is appropriate to live free or die - and when it isn't. Amen

Senator Delahunty led the Pledge of Allegiance.

INTRODUCTION OF GUESTS
COMMITTEE REPORTS

SB 6, an act permitting the bank commissioner to regulate the Claremont Industrial Development Authority as a small business lender under any loan funded through the New Hampshire business finance authority or the Small Business Administration. Banks committee. Ought to Pass with Amendment. Senator Barnes for the committee.

1254B

Amendment to SB 6

Amend the title of the bill by replacing it with the following:

AN ACT

permitting the bank commissioner to regulate municipal development authorities and organizations and not-for-profit development organizations which become small business lenders through certain federal and state loan programs.

Amend the bill by replacing section 1 with the following:

1 New Section; Municipal Industrial Development Authorities. Amend RSA 383 by inserting after section 9-d the following new section:

383:9-e Municipal Industrial Development Authorities. If a municipal industrial development authority, a city development office, or a not-for-profit development organization, becomes a small business lender through any loan program funded by the United States Small Business Administration which requires the organization to meet banking requirements as certified by an examination by the New Hampshire banking department, or any similar program sponsored by a state or federal agency, which requires an independent examination, the authority or organization shall not be deemed a banking institution but shall be subject to the supervision, examination, control and enforcement authority of the bank commissioner under RSA 383 with regard to its loan portfolio. If so subject, the authority or organization shall make an annual report under RSA 383:13 and shall pay the costs of any examination required by the commissioner under RSA 383:11.

AMENDED ANALYSIS

This bill permits the bank commissioner to regulate municipal development authorities and organizations and not-for-profit development organizations which become small business lenders through United States Small Business Administration loan programs or other federal and state loan programs.

SENATOR BARNES: SB 6 was brought to the committee by Senator Disnard. Claremont is one of about six cities that have industrial authorities. They wanted to be able to utilize funds from the SBA and the New Hampshire Finance Authority to help small businesses in their community. The committee feels that this is a good idea, especially in these economic times. The only thing that the amendment does is to allow any city or town in the state to create similiar programs. I urge your support.

Amendment adopted.

Ordered to third reading.

SB 96, an act making the State Credit Union Act conform with the Federal Credit Union Act. Banks committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1587B

Amendment to SB 96

Amend the bill by replacing all after the enacting clause with the following:

1 Credit Committee Optional. Amend RSA 394-B:5 to read as follows:

394-B:5 Contents. The bylaws shall prescribe the name of the corporation, the purposes for which it was formed, the conditions of residence or occupation which qualify persons for membership, the par value of the paid-in shares, the number of directors [and], ***the number*** of members of the [credit and] supervisory [committees] ***committee, and the number of members of the credit committee, if such committee is to be established,*** the duties of the several officers, the fines, if any, which shall be charged for failure to meet obligations to the corporation punctually, the date of the annual meeting of members, the manner in which members shall be notified of meetings, the number of members which shall constitute a quorum at meetings and such other regulations as may seem necessary.

2 Filling Vacancies. Amend RSA 394-B:13 to read as follows:

394-B:13 Filling Vacancies. In the event of the death[,] ***or the*** resignation or removal from office of any member of the board of directors, ***or of the*** supervisory committee[, or the credit committee], the board of directors shall fill such vacancy until the next annual meeting, at which any ***such*** unexpired terms [on the board of directors or supervisory committee] shall be filled by vote of the members.

3 Elections and Appointments. Amend RSA 394-B:28 to read as follows:

394-B:28 Elections and Appointments. The business and affairs of a credit union shall be managed by a board of not less than 5 directors elected by the members, a credit committee, ***if established,*** of not less than 3 members ***appointed by*** the board of directors, and a supervisory committee of 3 members to be elected by the members at the annual meeting.

4 Qualifications. Amend RSA 394-B:29 to read as follows:

394-B:29 Qualifications. Except in the case of a credit union with fewer

than 11 members, ***no more than*** one member of the board of directors of a credit union shall be a member of the supervisory committee of such credit union ***nor shall any such director be an employee or compensated officer of the credit union.***

5 Loan Officers. Amend RSA 394-B:34 to read as follows:

394-B:34 Loan [Officer] ***Officers***. When so provided by the bylaws, the board of directors may appoint and may provide for the compensation of loan officers to act under the supervision of the credit committee ***or, if none, the board of directors,*** and such loan officers, when so appointed and when authorized by the credit committee, ***or, if none, the board of directors,*** may [make such] ***approve or disapprove*** loans as prescribed in the lending policy, without the necessity for a meeting or approval by any member of the credit committee ***or, if none, the board of directors.*** [Such loan officer shall not disapprove of any loan application, but shall refer any loan application which he believes should be disapproved to the credit committee for action. All loans made by the loan officer shall be reviewed by the credit committee within 31 days following approval by theloan officer.] ***A member whose application was disapproved by a loan officer may appeal such action to the credit committee (or, if none, the board of directors), which may, by majority vote, reverse the loan officer's decision.***

6 Supervisory Committee. Amend RSA 394-B:40 to read as follows:

394-B:40 Supervisory Committee. The supervisory committee shall inspect from time to time the securities, cash and accounts of the credit union and shall keep fully informed of its financial condition, and shall supervise the acts of its board of directors, credit committee and officers, ***as may be provided in the bylaws.***

7 New Section; No Credit Committee. Amend RSA 394-B by inserting after section 47 the following new section:

394-B:47-a No Credit Committee. If the bylaws do not provide for the establishment of a credit committee, the duties and responsibility set forth in the preceding section shall be performed by the board of directors.

8 New Section; Advantageous Federal Powers. Amend RSA 394-B by inserting after section 52 the following new section:

394-B:52-a Advantageous Federal Powers. Pursuant to rules adopted by the commissioner in accordance with RSA 541-A, any credit union shall have and may exercise any power, right, benefit or privilege, now or hereafter authorized for federal credit unions by federal legislation, regulation or ruling.

9 Repeal. RSA 394-A:5, relative to credit unions, is repealed.

10 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill changes the State Credit Union Act (RSA 394-B) to bring it into conformity with the analogous provisions of the Federal Credit Union Act. In particular, the bill makes the establishment of a credit committee optional.

SENATOR FRASER: Mr. President, SB 96 simply makes the State Credit Union Act conform with the Federal Credit Union Act. The amendment replaces the whole bill and was worked out by the credit union people and the bank commissioners to address the way to make these two acts coincide. Basically it addresses the various committees within the credit unions that make up the membership qualifications and specifically makes the creation of a credit union committee optional. The committee urges adoption of the amendment.

Amendment adopted.

Ordered to third reading.

SB 180-FN-LOCAL, an act increasing the fee charged by the state on returned checks and making technical changes relating to enrollment and administrative provisions. Banks committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

1557B

Amendment to SB 180-FN-LOCAL

Amend the bill by replacing section 6 with the following:

6 Repeal. The following are repealed:
I. RSA 186:11, XX, relative to the board submitting a report.
II. RSA 186:11, XXI, relative to distribution of the board's report.
III. RSA 189:43, III, relative to teacher consultants.

AMENDED ANALYSIS

This bill increases the minimum amount charged by the state on returned checks and drafts; adds services relating to client rehabilitation to an exemption from the department of administrative services requirements for purchase of supplies; deletes references to teacher consultants and submission and distribution of a report by the board; and changes the enrollment basis relating to weighted voting.

This legislation was requested by the department of education.

SENATOR LAMIRANDE: SB 180 is more or less a clean up bill. It was requested by the Department of Education and it was introduced by Senator Disnard. It ended up in the Banks committee because the first section of the bill deals with fees charged by the state for returned checks. The department had been charging $20 for returned checks on applications for certification. They found out that the law only allowed them to charge $10 and so they are requesting that the fee charge be increased to $20. They figured since they were amending that statute they would also clean up the outdated references to the Department of Education. The amendment just adds a few more outdated references and the committee voted it ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 183-FN-LOCAL, an act requiring the tax collector to notify certain mortgagees prior to execution of a tax deed. Banks committee. Ought to Pass. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, all that SB 183 does is to require the tax collector to notify 30 days prior to the foreclosure sale to any mortgagees or anyone who is given those previous in the RSA's. We urge its adoption.

Adopted.

Ordered to third reading.

SB 189-FN, an act allowing the housing finance authority to issue guarantees of certain home mortgage loans to help provide housing security. Banks committee. Re-referred to committee. Senator Barnes for the committee.

SENATOR BARNES: SB 189 is a good bill and the committee felt that it should go forward. The only problem that we had was that there was no money available to implement the program. The committee would like to have the bill re-referred until next year, so that we are able to look into another way of funding the program. I hope that you can support this.

Adopted.

Committee report of re-referred is adopted.

SB 227-FN, an act exempting from registration the issuance of certain securities. Banks committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

1602B

Amendment to SB 227-FN

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a revenue-neutral initial public offering exemption for national securities markets and clarifying which securities markets do not qualify for an exemption.

Amend the bill by replacing all after the enacting clause with the following:

1 Exemptions Added. RSA 421-B:17, I(f) is repealed and reenacted to read as follows:

(f)(1) Any security listed or approved for listing upon notice of issuance on the following securities markets, and any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities exempted in this subparagraph:

(i) The New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation National Market System,

(ii) The Boston Stock Exchange, the Chicago Board Options Exchange or the securities designated by the board of governors of the Federal Reserve System as "O.T.C. Margin Stocks," if quotations have between available and public trading has taken place for such class of security prior to the offer or sale of that security in reliance upon this exemption.

(2) The secretary of state may withdraw an exemption in subparagraph (f)(1) if the secretary determines, for any security or class of securities sought to be sold in reliance upon this exemption, that the listing requirements or standards have been so changed, or so insufficiently applied, that the protection of investors contemplated and relied upon by the legislature in granting this exemption is no longer afforded or is substantially reduced.

(3) The exemption provided by the subparagraph shall not be available to securities listed on the American Stock Exchange Emerging Company Marketplace, the National Association of Securities Dealers Automated Quotation Small Cap Market, or any other securities market affiliated with a market named in subparagraph (f)(1)(i) or (ii) and so designated by the secretary of state.

(4) Issuers of securities that are exempt under subparagraph (f)(1)(i) shall pay a fee for the initial public offering within 30 days after the first sale of the securities in this state. Failure to pay the fee may result in the loss of the exemption allowed by this subparagraph.

2 Fees Added. Amend RSA 421-B:31, I(h) to read as follows:

(h) Fee for securities sold in initial public offerings in this state under RSA 421-B:17, I(f)(1)(i) 2/10 of one percent of the offering value of the issue sold in this state provided said fee shall not be more than $1,050.

(i) Non-refundable examination fee for RSA 421-B:17, II(r) exemption $500

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill establishes a revenue-neutral initial public offering exemption for national securities markets and clarifies which securities markets do not qualify for an exemption.

SENATOR LAMIRANDE: I rise in support of SB 227 to promote business in New Hampshire and to widen the investment opportunity for New Hampshire's citizens. Under current New Hampshire law, any company that is going public to raise capital must file with the New Hampshire Bureau of Security Regulations and have their registration statement reviewed by state employees before they can raise capital from New Hampshire citizens. While that makes excellent sense for smaller companies, that could pose a risk to our investors. New Hampshire does something that almost no other state in the union does, it requires this registration, and in review and a filing fee for companies that are listed on the New York and the American Stock Exchange in the NASDAQ National Market System. The reason that the other 48 states do not require registrations for those companies is because they have to meet very high standards just to get listed on those markets in the first place and are reviewed by listing staff of the exchange and by market analysis who look deeper into those companies than any other states staff could ever look. All of the other 48 states as well as their professional group, the North American Security Administration Association have therefore seen no need for the kind of review that New Hampshire subjects these companies to before they can sell in our state. Because these companies can raise the money that they need from other states, they don't require them to run our bureaucratic guantlet, they often avoid selling in New Hampshire. Our states registration requirements are therefore protecting our investors from investing in some of the best companies in the country when they go public, more importantly, to New Hampshire however, is the fact that our current law raises hurdles for strong New Hampshire companies that need to raise capital to grow, in spite of the lack of capital that we have experienced in recent years, making New Hampshire companies like Health Source and Hadco or Prestech, register to raise capital from New Hampshire investors, makes little sense when those companies can raise their capital from Massachusetts or from almost any other state without any state revenue review. We are erecting bureaucratic barriers that limit the capital growth opportunities for New Hampshire companies

without providing any additional investor protection. This bill therefore proposes deleting the New Hampshire requirement for registering initial public offerings that will be listed on the New York or American Stock Exchange or the NASDAQ National Market System. The Senate Bank committee has amended the bill to have a revenue neutral impact. All the bill does is to allow securities that are already listed on the American and New York Stock Exchange and NASDAQ to not have to go through an additional registration by New Hampshire because they have already been scrutinized carefully by the National Exchange. The amendment makes the bill revenue neutral by allowing the state to charge a fee for the exemption and the committee urges that you pass it with amendment.

Amendment adopted.

Ordered to third reading.

SB 230-FN, an act relative to sprinkler systems in supported residential care facilities. Banks committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

1530B

Amendment to SB 230-FN

Amend the title of the bill by replacing it with the following:

AN ACT
relative to sprinkler systems in residential care homes
and supported residential care facilities.

Amend the bill by replacing section 1 with the following:

1 New Section; Loans to Residential Care Homes and Supported Residential Care Facilities. Amend RSA 204-C by inserting after section 47 the following new section:

204-C:47-a Residential Care Homes and Supported Residential Care Facilities; Rulemaking.

I. Operators of residential care homes and supported residential care facilities may apply to the authority for loan assistance in installing fire safety equipment, including sprinkler systems. For the purposes of this section "residential care homes and supported residential care facilities" are non-medical, public or privately owned and operated community based living arrangements which, in addition to providing residential care services such as shelter, food and protective oversight to a population of adult, elderly, disabled, special needs and special care residents, supported residential care, also provide, directly or by contract, health related services required by the residents for less than 24 hour care or for 24-hour care for a short duration acute illness.

II. The authority shall adopt rules under RSA 204-C:53 relative to:

(a) Eligibility requirements.

(b) Loan repayment schedules.

(c) Any other matter necessary to administer this section.

AMENDED ANALYSIS

This bill authorizes operators of residential care homes and supported residential care facilities to apply for loans from the New Hampshire housing authority in order to equip such facilities with appropriate fire safety equipment, including sprinkler systems. The authority shall adopt rules to administer this bill.

SENATOR LAMIRANDE: This is very short and to the point. SB 230-FN authorizes operators of residential care homes and supported residential care facilities to apply for loans from the New Hampshire Housing Authority in order to equip such facilities with appropriate fire safety equipment, including sprinkler systems. The purpose of the bill is because residential care homes and supported residential care facilities are non medical and this just authorizes them to be able to apply for the New Hampshire Housing Authority for a loan. The committee voted it ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SCR 2, an act relative to the James Bay II project of Hydro-Quebec. Environment committee. Split Vote: Ought to Pass. Senator Cohen for the committee. Split Vote: Inexpedient to Legislate. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, this resolution has been portrayed as both "just a resolution", so why not go along with our good friend and colleague, Senator Burt Cohen. As an important measure and critical to New Hampshire and worthy of tying up this Senate, it passes on its own merits. It can not be so important or so unimportant at the same time. So I have decided that I cannot agree with my good friend Senator Cohen. At this point, this Senate should spend all of it's time on energy in this issue. Here is why: Whatever is going on up there 1,000 miles away it is hard to imagine that it is anymore relevant to our job as elected officials here when resolutions we can expect on the Middle East, Somalia, Bosnia, Cambodia, Los Angeles or the South Bronx. We have a job to do here in New Hampshire. We are a New Hampshire citizen legislature elected to deal with New Hampshire issues. Unless they can be dealt with without distractions from those issues we are expected to deal with, resolutions aimed at foreign countries are not part of our job. Mr. President, I urge that the SCR 2 be reported out as inexpedient.

SENATOR COHEN: This is a complex issue. Many issues have been raised and a great deal of willful misinformation has been put out in recent days about this bill. I have a statement and I tried to keep it as short as I could in deference to the work that we have ahead of us. This non-binding resolution is about New Hampshire's freedom to choose. It states that we have a right to decide our own options, that no foreign power, not even a friendly sovereign state, such as Quebec, can make our choices for us. This resolution is about New Hampshire owning up to the results of our purchases of Canadian hydropower. It says that we have the right to look before we leap. That we as consumers; have the right to find out about how a product is made and then decide if we are comfortable enough with that manufacturing process to go ahead with that purchase. For example, if we know about China's forced labor, do we turn a blind eye and support that system? We have a right to choose not to buy Chinese products. Another example, tropical hardwoods, 50,000 acres of rain forests are destroyed each day. By buying rain forest wood we contribute to the problem or we can withdraw from those purchases which cause the destruction as New York has done. I would argue that it is incumbent on us to take appropriate measures to stop the devastation. It is not just electricity that we buy when we plug into Hydro-Quebec, when we buy power from them we are directly supporting the removal of people from their homes, the destruction of an indigenous culture and devastation

through massive flooding of a wilderness rich in fishing and hunting resources. This resolution says that what we choose to buy is our business and nobody elses and that we will not be forced into a purchase without the full knowledge and acceptance of the environmental, social, cultural and economic implications of our purchase. The resolution says that we have the right to examine and then decide. In recent days we have all felt intense lobbying and pressure from Hydro-Quebec, they don't want us to choose for ourselves. But let us step back and ask ourselves, who is calling the shots here? Hydro-Quebec or the people of New Hampshire? It has been our understanding that the 24 of us here owe our loyalty to our constituents and not to some foreign corporation. Legally our purchasing rights are secure. The United States Supreme Court held that a state can decide for itself whether or not to participate in any foreign or interstate commerce. We are not talking about regulation here, we are talking about market participation. Under the current free trade agreement discussions, Congress has expressly said, "that it does not intend that agreement to preempt state revenue of power purchases", therefore, it is clearly within New Hampshires jurisdiction to make this decision. We have the right to kick the tires before we decide to buy. This specific unprecedented environmental devastation caused by our contracts with Hydro-Quebec is spelled out in the resolution that you have before you. Please, I ask that you look it over before you vote. I must admit that when I wrote it, I wasn't aware of the adverse environmental impacts of the James Bay project on New Hampshire wildlife. But New Hampshire Fish and Game Department and the Fish and Game Commission in their own Hydro-Quebec Resolution, recognized that the second phase of Hydro- Quebec development will adversely impact rivers and wetlands, which in their words, "are a key habitat component for North American water fowl and shore bird population". We in New Hampshire are a party to this alteration of the ecology of Northern Quebec through our purchase and use of power from Hydro-Quebec in our state's permitting the transmission facilities. So when we buy into Hydro-Quebec, we help destroy habitat essential to many bird species which New Hampshire hunters and bird watchers now take for granted. This resolution asks if we really want to do that. As it was made clear in the hearing of the resolutions, Quebec has different environmental standards, as of course, is their right; part of what they call environmental mitigation includes, after the flooding releases methel mercury into their food chain, telling the Cree and the Induit people not to eat their fish for 20 to 30 years. That is environmental mitigation to them. But when they tell us that their environmental review process is of no concern to us, I say that it is. We have a right to know how a product we may buy is made, we have a right to choose if we still want that product. The truth is that the ultimate decision to proceed or not to proceed with phase II is not made by any environmental regulatory agency. In fact, Hydro-Quebec has never been refused permission to develop any significant project due to environmental impacts. The recommendation of the ongoing review are totally non-binding. Yet, Hydro-Quebec has still found it necessary to go to court to stop even this process. The decision to go ahead is totally in the hands of cabinet ministers, many of whom have publicly committed themselves to the full development of James Bay. So regardless of the environmental review, the decision will be made in secret by people who are determined to build it. Canadian utilities don't have to meet the same environmental reviews that we required. So again, buying power from Hydro-Quebec, by doing that we are putting our utilities at a disadvan-

tage. The choice is between generating jobs in New Hampshire or jobs in Quebec. I find that an easy choice. The review process in Quebec of course doesn't consider other better ways that we in New Hampshire could meet our energy needs and know that the choice is not between James Bay or coal or nuclear power as Hydro-Quebec and their American Public Relations firm have been falsely insisting. We have no lack of energy options which are positive economically and environmentally. There is an abundant supply of clean natural gas, there are many environmentally appropriate hydro and wood projects already providing jobs here in New Hampshire and these, coupled with demand side management, least cost energy planning and investments and realistic efficiency measures are more than sufficient to get us through many decades until accelerated research now solidly backed by the new administration develops better energy source and storage technology. So this Resolution puts us on record for sound energy planning and our secure energy future. The resolution also says that we here in New Hampshire believe that peoples rights to consent or developing on their land are paramount human rights. I am speaking of course of the Cree and Induit who have lived in James Bay for 5,000 years. New Hampshire's contract with Hydro-Quebec helps to destroy the lands and the livelihood of the natives of James Bay. The Indians have a minority representation on the review panels, but their voice is meaningless because they have no veto power over their own land. I find that unacceptable. This Resolution says that it is our right, and in fact, it is our responsibility to speak out against unjustice when we recognize it and this is a clear case of racial injustice which I, for one, can not turn my back on. The reason that I invited my colleagues to the hearing on the Resolution is because I believe that once we all know the true effects of our deal with Hydro-Quebec, very few of us will feel comfortable buying into it. Groups who supported the Resolution include the Anglician Church of Canada, the Catholic Diocese of Manchester, the Audubon Society, the Sierra Club, The Society for Protection of New Hampshire Forests, the New Hampshire Fish and Game, Merrimack Valley Paddlers, Natural Resources Defense Council and the New Hampshire AFCIL, the Wildlife Federation supports it, are opposed to phase II as did Presidential candidate, Bill Clinton. I would not call these people extremists. The Resolution of course is non binding and it is very puzzling to me why Hydro-Quebec has pressured us so heavily. Even if we lose this Resolution today, our role will not stop here today. Throughout New England and New York and Canada, people are making the choice not to buy. It is our responsibility and our right as well to choose what we buy. Please look over the resolution and consider carefully before you decide. When you vote, please listen to your conscience and not power politics. The choice is New Hampshire's to make. Thank you.

SENATOR W. KING: I am going to disagree with my good friend Senator Fraser when he says, "that something that is happening 1,000 miles from us doesn't matter". It may not matter to us in a small sense, but it should matter to us as human beings. Because what is happening to the Cree and Induit people in Canada is inexcusable. There are those who say to us that we have no business in this because of the way that we treated the Native people of this country. I would say to you that what we have learned in that process should make us wise enough to say that in fact it is our obligation to speak out about the injustice that is being perpetrated on the Cree people and the Induit people. I would also say that it is absolutely essential to recognize that the levels of mercury poisoning that have occured as a result of the first phase of Hydro-Quebec have made it

virtually impossible for these people to continue to fish, to eat and to live in the way that they have before in that area. What Canada is threatening to do with this second phase of this project is to extend that poisoning into a whole other part of their lands. That doesn't just effect them, ultimately it may effect us because the plume of mercury poisoning extends well out into James Bay. Ultimately, that change will reach us in some way or another. This Senate stood up when Saddam Hussein went into Kuwait and said that he was doing the wrong thing. Some years ago this Senate took a position when the students at Tiananmen square were attacked by the Chinese government. We in fact do have a moral authority to take a position on an issue like this. It seems to me that economic development aside, because that is the argument that is being made here, that this is an economic development issue and that we can't stop it, that economic development should not occur at the cost of an entire nation of people.

Senator Delahunty moved to have SCR 2 an act relative to the James Bay II project of Hydro-Quebec, laid on the table.

Adopted.

LAID ON THE TABLE

SCR 2, an act relative to the James Bay II project of Hydro-Quebec.

SB 139-FN-A, an act requiring the department of environmental services to design a river basin planning and assessment program and making an appropriation therefor. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

1610B

Amendment to SB 139-FN-A

Amend paragraph II(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Basin plans and resource assessments shall be developed for each of the 22 fifth and higher order river basins identified by the department. This shall include developing and evaluating methodologies to identify protected instream flows for each river basin.

Amend section 1 of the bill by deleting paragraph III.

SENATOR RUSSMAN: This bill is one of four bills effecting public water policy in the state of New Hampshire. What this bill does, in essence, is to have the Department of Environmental Services do a basin study to at least find out what we have available in terms of water in the state as a first step or phase in the process. So this is one bill, there are two others in the House and there is still one in the Senate Environment. But this one actually asks DES to determine what we have available. Thank you.

Amendment adopted.

SENATOR COLANTUONO: Senator Russman, is the appropriation still in this bill so that this bill will get sent to Finance?

SENATOR RUSSMAN: I believe that it is. Yes, it is.

SENATOR COLANTUONO: So the amendment didn't take out the appropriation?

SENATOR RUSSMAN: Right, it would have to go to Finance.

Referred to the Division on Finance (Rule #24).

SB 193, an act relative to liability under the hazardous waste laws. Environment committee. Ought to Pass with Amendment. Senator W. King for the committee.

1581B

Amendment to SB 193

Amend the title of the bill by replacing it with the following:

AN ACT
relative to liability under the hazardous waste, oil spillage and underground storage facilities laws and amending statutory definitions to clarify the secured creditor exemption.

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose. The general court finds it desirable to promote the availability of credit for business and for residential and commercial development by clarifying the proper scope of the state's environmental laws as they relate to secured creditors, while at the same time maintaining and promoting the state's interest in protecting the environment. Therefore, the general court finds it desirable to clarify the protection given creditors and to extend the protection given creditors to fiduciaries in their individual capacities.

2 New Paragraphs; Definitions Added. Amend RSA 146-A:2 by inserting after paragraph I-d the following new paragraphs:

I-e. "Fiduciary" means a person:

(a) Who is acting in any of the following representative capacities, but only to the extent such person is acting in such representative capacity; an executor or administrator of an estate, including a voluntary executor or a voluntary administrator; a guardian; a conservator; a trustee under a will under which the trustee takes title to, or otherwise controls or manages, property for the purpose of protecting or conserving such property under the ordinary rules applied in the courts of the state of New Hampshire; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; an assignee or a trustee acting under an assignment made for the benefit of creditors; or a trustee, pursuant to an indenture agreement or similar financing agreement, for debt securities, certificates of interest of participation in any such debt securities, or any successor thereto;

(b) Who holds legal title to, controls, or manages, directly or indirectly, any facility or vessel as a fiduciary for purposes of administering an estate or trust of which such facility or vessel is a part; and

(c) Who is otherwise not engaged in petroleum production, refining or marketing.

I-f. "Holder" means a person who holds indicia of ownership primarily to protect a mortgage interest or security interest in real or personal property on or at a facility or vessel and who is otherwise not engaged in petroleum marketing, refining or production.

I-g. "Indicia of ownership" means evidence of a mortgage lien, a security interest, or other interests in real or personal property securing payment or performance of a loan or other obligation.

3 New Paragraph; Definition Added. Amend RSA 146-A:2 by inserting after paragraph VI-b the following new paragraph:

VI-c. "Primarily to protect a mortgage interest or security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing the payment or performance of the loan or other obligation.

4 New Sections; Liability Limited. Amend RSA 146-A by inserting after section 3-b the following new sections:

146-A:3-c Limited Liability for Holders.

I. A holder who has not assumed ownership of a facility or vessel by the act of taking title by foreclosure or by other similar means and who has not assumed responsibility for the operation of the facility or vessel shall not be liable under RSA 146-A:3-a.

II.(a) A holder who has assumed ownership of a facility or vessel by the mere act of taking title by foreclosure or other similar means or who has assumed responsibility for the operation of a facility or vessel shall be liable under RSA 146-A:3-a unless the holder fulfills the following conditions in which case its liability shall be limited in accordance with subparagraph (b):

(1) The holder reports to the division any known or suspected discharge or spillage of oil from the facility or vessel;

(2) The holder undertakes emergency response measures to stop an ongoing discharge, prevent further discharge of oil, and address any imminent health hazard created by the discharge or spillage;

(3) The holder secures the facility or vessel as necessary to prevent exposure to oil by fencing or otherwise limiting access;

(4) The holder conducts all actions required under this subparagraph and all other response actions or corrective measures, including those voluntarily assumed, in accordance with the department's rules; and

(5) The holder provides the division, its employees and authorized representatives with access to the facility or vessel for inspection, testing, response and remedial activity and any other purposes authorized under this chapter.

(b) A holder who has complied with the conditions of subparagraph (a) shall not be liable under RSA 146-A:3-a unless such holder or its employees cause any discharge or spillage of oil, in which case the holder shall be liable for the lesser of:

(1) actual damages caused by the holder or its employees;

(2) the value of the secured property as determined by a method acceptable to both the state and the holder, until otherwise specified by rules of the department, or

(3) the amount of the outstanding indebtedness secured by the facility or vessel.

III. Nothing in this section shall preclude claims under RSA 146-A:3-a against non-employee agents or independent contractors retained by a holder.

IV. Nothing in this section shall preclude claims to recover costs under RSA 146-A:3-a against a holder whose negligent acts or omissions or intentional misconduct has caused the discharge or spillage of oil. A holder as described in paragraph I or a holder who fulfills the conditions of paragraph II(a) shall not be attributed with the negligence or intentional misconduct of non-employee agents or independent contractors so long as such holder has conducted itself without fault with regard to its relationship with such non-employee agents or independent contractors.

146-A:3-d Limited Liability for Fiduciaries

I. A fiduciary shall not be liable in its individual capacity under RSA 146-A:3-a.

II. Nothing in this section shall preclude claims under RSA 146-A:3-a against:

(a) a fiduciary in its representative capacity;

(b) the assets of the estate or trust administered by the fiduciary; or

(c) non-employee agents or independent contractors retained by a fiduciary.

III. Nothing in this section shall preclude claims to recover costs under RSA 146-A:3-a against a fiduciary in its individual capacity whose negligent acts or omissions or intentional misconduct has caused the discharge or spillage of oil. A fiduciary shall not be attributed with the negligence or intentional misconduct of non-employee agents or independent contractors so long as the fiduciary has conducted itself without fault with regard to its relationship with such non-employee agents or independent contractors.

5 New Paragraph; Rulemaking Authority Added. Amend RSA 146-A:11-c by inserting after paragraph VIII the following new paragraph:

VIII-a. Interpretation of the scope of the exemptions and liability limitations for holders and fiduciaries.

6 New Paragraph; Definition Added. Amend RSA 146-C:1 by inserting after paragraph VII-a the following new paragraphs:

VII-b. "Fiduciary" means a person:

(a) Who is acting in any of the following representative capacities, but only to the extent such person is acting in such representative capacity: an executor or administrator of an estate, including a voluntary executor or a voluntary administrator; a guardian; a conservator; a trustee under a will under which the trustee takes title to, or otherwise controls or manages, property for the purpose of protecting or conserving such property under the ordinary rules applied in the courts of the state of New Hampshire; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; an assignee or a trustee acting under an assignment made for the benefit of creditors; or a trustee, pursuant to an indenture agreement or similar financing agreement, for debt securities, certificates of interest of participation in any such debt securities, or any successor thereto; and

(b) Who holds legal title to, controls, or manages, directly or indirectly, any facility as a fiduciary for purposes of administering an estate or trust of which such facility is a part; and

(c) Who is otherwise not engaged in petroleum production, refining or marketing.

VII-c. "Holder" means a person who holds indicia of ownership primarily to protect a mortgage interest or security interest in real or personal property on or at the facility and who is otherwise not engaged in petroleum production, refining or marketing.

VII-d. "Indicia of ownership" means evidence of a mortgage lien, a security interest, or other interests in real or personal property securing payment or performance of a loan or other obligation.

VII-e. "Primarily to protect a mortgage interest or security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing the payment or performance of the loan or other obligation.

7 Definition Modified. Amend RSA 146-C:1, XIV-a to read as follows:

XIV-a. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state and agencies thereof, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, the United States government and agencies thereof, and any other legal entity. [The term "person" shall not include a person who,

without participating in the management or actual operation of the facility, and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect a mortgage on real property on which a facility is located or a security interest in personal property located at the facility.]

8 New Sections; Liability Limited. Amend RSA 146-C by inserting after section 11 the following new sections:

146-C:11-a Limited Liability for Holders.

I. A holder who has not assumed ownership of a facility or facility site by the act of taking title by foreclosure or by other similar means or who has not assumed responsibility for the care, custody or control of a facility or facility site shall not be considered an owner or operator under this chapter and shall not be liable under RSA 146-C:11.

II.(a) A holder who has assumed ownership of a facility or facility site by the mere act of taking title by foreclosure or other similar means or who has assumed responsibility for the care, custody or control of a facility or facility site shall be liable under RSA 146-C:11 unless the holder fulfills the following conditions in which case its liability shall be limited in accordance with subparagraph (b):

(1) The holder notifies the division of the facility if the holder knows or has reason to know of its existence and the facility is not registered;

(2) The holder reports to the division any known or suspected discharge or disposal of oil or hazardous substance from the facility;

(3) The holder assesses the facility's compliance with department rules adopted under the authority of RSA 146-C and provides the division with the results of the assessment;

(4) The holder undertakes emergency response measures to stop an ongoing discharge or disposal of oil or hazardous substance, prevent further disposal, and address any imminent health hazard created by the disposal;

(5) The holder secures the facility or site as necessary to prevent exposure to oil or hazardous substances by fencing or otherwise limiting access;

(6) The holder conducts all actions required under this subparagraph and all other cleanup actions or corrective measures, including those voluntarily assumed, in accordance with the department's rules; and

(7) The holder provides the division, its employees and authorized representatives with access to the facility or site for inspection, testing, containment, removal and cleanup activity and any other purposes authorized under this chapter.

(b) A holder who has complied with the conditions of subparagraph (a) shall not be considered an owner or operator under this chapter and shall not be liable under RSA 146-C:11 unless such holder or its employees cause any disposal of oil or hazardous substance, in which case the holder shall be liable for the lesser of:

(1) actual damages caused by the holder or its employees;

(2) the value of the secured property as determined by a method acceptable to both the state and the holder, until otherwise specified by rules of the department, or

(3) the amount of the outstanding indebtedness secured by the facility or site.

III. A holder that assumes primary responsibility for the business operations of a facility or facility site shall be deemed an operator under

this chapter. Such holder shall not be strictly liable under RSA 146-C:11 for discharges or disposals commencing before the holder first conducts or manages the business operations of the facility if the holder has fulfilled the conditions of paragraph II(a).

IV. Nothing in this section shall preclude claims under RSA 146-C:11 against non-employee agents or independent contractors retained by a holder.

V. Nothing in this section shall preclude claims for response costs under RSA 146-C:11 against a holder whose negligent acts or omissions or intentional misconduct has caused the discharge or disposal of oil or hazardous substances. A holder as described in paragraph I or a holder who fulfills the conditions of paragraph II(a) shall not be attributed with the negligence or intentional misconduct of non-employee agents or independent contractors so long as such holder has conducted itself without fault with regard to its relationship with such non-employee agents or independent contractors.

146-C:11-b Limited Liability for Fiduciaries

I. A fiduciary shall not be considered an owner or operator under this chapter in its individual capacity and shall not be liable in its individual capacity under RSA 146-A:11.

II. Nothing in this section, shall preclude claims under RSA 146-C:11 against:

(a) a fiduciary in its representative capacity;

(b) the assets of the estate or trust administered by a fiduciary; or

(c) non-employee agents or independent contractors retained by a holder or fiduciary.

III. Nothing in this section, shall preclude claims to recover response costs under RSA 146-C:11 against fiduciaries in their individual capacity based on negligence or intentional misconduct. Fiduciaries shall not be attributed with the negligence or intentional misconduct of non-employee agents or independent contractors so long as the fiduciary has conducted itself without fault with regard to its relationship with such non-employee agents or independent contractors.

9 Definitions Modified. Amend RSA 147-A:2, XI-XII to read as follows:

XI. "Operator" means any person who, either directly or indirectly, [owns,] operates, or otherwise controls or directs activities at a facility.

XI-a. "Owner" means any person who, either directly or indirectly owns a facility. The term "owner" does not include a person who, without participation in the management or actual operation of a facility, holds indicia of ownership primarily to protect a mortgage on real property on which a facility is located or a security interest in personal property located at the facility.

XII. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body. [The term "person" shall not include a person who, without participation in the management or actual operation of the facility, holds the indicia of ownership primarily to protect a mortgage on real property on which a facility is located or a security interest in personal property located at the facility.]

10 Definition Added. Amend RSA 147-B:2 by inserting after paragraph III the following new paragraph:

III-a. "Fiduciary" means a person:

(a) Who is acting in any of the following representative capacities, but only to the extent such person is acting in such representative capacity: an executor or administrator of an estate, including a voluntary executor or a voluntary administrator; a guardian; a conservator; a trustee under a will under which the trustee takes title to, or otherwise controls or manages, property for the purpose of protecting or conserving such property under the ordinary rules applied in the courts of the state of New Hampshire; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; an assignee or a trustee acting under an assignment made for the benefit of creditors; or a trustee, pursuant to an indenture agreement or similar financing agreement, for debt securities, certificates of interest of participation in any such debt securities, or any successor thereto, and

(b) Who holds legal title to, controls, or manages, directly or indirectly, any facility as a fiduciary for purposes of administering an estate or trust of which such facility is a part.

9 New Paragraphs; Definitions Added. Amend RSA 147-B:2 by inserting after paragraph VIII-d the following new paragraphs:

VIII-e. "Holder" means a person who holds indicia of ownership primarily to protect a mortgage interest or security interest in real or personal property on or at the facility.

VIII-f. "Indicia of ownership" means evidence of a mortgage lien, a security interest, or other interests in real or personal property securing payment or performance of a loan or other obligation.

VIII-g. "Participation in the management of a facility" means the actual participation by a holder in the management or operational affairs of the facility, including without limitation where a holder or fiduciary (i) exercises decision-making control over environmental compliance or (ii) exercises control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decision-making either with respect to environmental compliance or all or substantially all of the operational (as opposed to financial or administrative) aspects of the facility. The following types of activities, among others, shall not constitute participation in the management of a facility:

(a) Taking title to a facility by foreclosure, by accepting a deed to such facility in lieu of foreclosure or by other similar means, or the transfer or sale of such facility;

(b) Conducting, or requiring the borrower to conduct, an environmental assessment or audit of the facility;

(c) Withholding funds under an existing obligation or restructuring or renegotiating the terms of a borrower's obligations, including but not limited to, requiring the payment of interest, the extension of payment periods or the issuance of additional funds;

(d) Providing to the borrower financial advice;

(e) Requiring or advising the borrower to comply with federal, state or local laws, rules, regulations, orders or permits;

(f) Collecting rents, maintaining utility services and securing the facility from unauthorized entry; and

(g) Undertaking any cleanup action approved by the division.

VIII-h. "Primarily to protect a mortgage interest or security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing the payment or performance of the loan or other obligation.

VIII-i. "Qualifying holder" means a holder who does not participate in the management of the facility.

11 Definition Modified. Amend RSA 147-B:2, IX to read as follows:

IX. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body. [The term "person" shall not include a person who, without participation in the management or actual operation of a facility, holds the indicia of ownership primarily to protect a mortgage on which a facility is located or a security interest in personal property located at the facility.]

12 Rulemaking Added; Technical Change. Amend RSA 147-B:7, I(c) and (d) to read as follows:

(c) Certified reports required to be submitted with fee payments by generators and by facility owners and operators; [and]

(d) Exemption from the generator fee for generators participating in hazardous waste recycling programs[.]; **and**

(e) Interpretation of the scope of the exemptions, limitations of liability, and lien priority provisions for holders and fiduciaries, including qualifying holders.

13 Strict Liability; References Added. Amend the introductory paragraph of RSA 147-B:10, I to read as follows:

I. Subject only to the defenses set forth in RSA 147-B:10-a ***and the exclusions and limitations set forth in RSA 147-B:10-a, IV and V,*** any person who:

14 New Paragraphs; Strict Liability; Exclusions and Limitations Added. Amend RSA 147-B:10 by inserting after paragraph III the following new paragraphs:

IV. Notwithstanding paragraph I, the liability of a holder, when acting as a holder, shall be determined as follows:

(a) A qualifying holder shall not be liable to the state or any other person under paragraph I.

(b) A holder who is not a qualifying holder shall be liable under paragraph I, however, the liability of a holder who demonstrates that its acts or omissions have not caused the release of hazardous waste or materials at a facility shall be limited to the lesser of:

(1) the value of the secured property as determined by a method acceptable to both the state and the holder, until otherwise specified by rules of the department, or

(2) the amount of the outstanding indebtedness secured by the facility.

(c) Nothing in this section shall preclude claims under paragraph I against non-employee agents or independent contractors retained by a holder.

(d) Nothing in this section shall preclude claims to recover response costs under paragraph II against a qualifying holder whose negligent acts or omissions or intentional misconduct has caused the release of hazardous waste or materials at a facility. A qualifying holder shall not be attributed with the negligence or intentional misconduct of non-employee agents or independent contractors so long as the qualifying holder has conducted itself without fault with regard to its relationship with such non-employee agents or independent contractors.

negligence or intentional misconduct of

V. Notwithstanding paragraph I, the liability of a fiduciary, when acting as a fiduciary, shall be determined in accordance with the following:

(a) A fiduciary shall not be liable in its individual capacity to the state or any other person under paragraph I.

(b) Nothing in this section shall preclude claims under paragraph I against:

(1) a fiduciary in its representative capacity;

(2) the assets of the estate or trust administered by the fiduciary; or

(3) non-employee agents or independent contractors retained by a fiduciary.

(c) Notwithstanding this section, nothing shall preclude claims to recover response costs under paragraph II against a fiduciary in its individual capacity whose negligent acts or omissions or intentional misconduct has caused the release of hazardous waste or materials at a facility. A fiduciary shall not be attributed with the negligence or intentional misconduct of non-employee agents or independent contractors so long as the fiduciary has conducted itself without fault with regard to its relationship with such non-employee agents or independent contractors.

15 Liens; Liability Modified. Amend RSA 147-B:10-b, I to read as follows:

I. The division of waste management shall have a lien upon the business revenues and all real and personal property of any person subject to liability under RSA 147-B:10, I for all costs [incurred] recoverable by the state pursuant to RSA 147-B:10, II.

16 New Subparagraph; Lien Amount Modified. Amend RSA 147-B:10-b, III by inserting after subparagraph (c) the following new subparagraph:

(d) Notwithstanding the lien priorities created under subparagraphs (a)-(c), a holder who, either voluntarily or in conjunction with others (including the state and federal government), undertakes clean-up activities or expends funds on other response or remedial costs, shall have a lien of equal rank and priority with the lien created by paragraph I to the extent of monies expended for remediation.

17 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill limits the liability of certain secured creditors under the hazardous waste, oil spillage, and underground facilities laws.

SENATOR W. KING: SB 193 provides limited limits against liability of certain creditors. It is a bill that was worked out in conjunction with the Attorney General's Office, the Department of Environmental Services, the Business and Industry Association and the New Hampshire Bankers Association in conjunction with one another so that we would be able to encourage lending institutions to continue to loan despite the fact that they are reluctant because of some hazardous waste laws to do so for commercial property.

SENATOR SHAHEEN: Senator King, I assume that this applies only to New Hampshires' hazardous waste laws so that it wouldn't cover any of the super funds?

SENATOR W. KING: Right. We have no authority to do that. But this does reflect however, the changes that are currently being made at the federal level or have already been made at the federal level.

SENATOR SHAHEEN: When you say, "changes that are being made", would that cover superfund loss?

SENATOR W. KING: What the EPA has done is made some similar changes to this dealing with the liability of the lenders. If the lender in fact, knew or participated in any way in the creation of hazardous waste, then the lender is in fact still liable. But if the lender did not know of that and did not participate in any way, then they are not.

SENATOR COLANTUONO: Under this bill, does this bill mean that if a private owner has a potential liability but the bank foreclosures and takes it over, the bank has less of a liability than the former prior owner?

SENATOR W. KING: That is correct.

SENATOR COLANTUONO: If the bank . . .

SENATOR W. KING: As long as they did not know of the situation.

SENATOR COLANTUONO: And then if the bank then sells it to a new owner, does the new owner then take its subject to the limited liability of the bank?

SENATOR W. KING: The intent here is to allow the bank to proceed with the clean up without becoming liable itself so then it can resell the property.

SENATOR COLANTUONO: Does it require that the bank fix the problem before it sells?

SENATOR W. KING: I believe the answer to that is no.

SENATOR COLANTUONO: Do you think that this will encourage foreclosures when people who own property find out that they have an environmental waste problem, they then just let it go, don't pay the mortgage and let it go?.

SENATOR W. KING: No. Because those individuals are still responsible under the current hazardous waste laws of both the state and the federal government.

SENATOR COLANTUONO: Okay.

SENATOR LOVEJOY: Has there been any thought given as to what this might do to the availability of certain commerical loans from banks?

SENATOR W. KING: There has been a great deal of thought given to that. In fact, one of the reasons that this has come up is because the credit problem has brought to light some of the issues that have made banks reluctant to lend to commercial businesses. One of the issues that has made them reluctant to lend to commercial business is the issue of whether or not they would be liable should there be a problem with hazardous waste at one of those sites. So this clarifies the law to say when they would be responsible and when they would not be responsible. So I guess you could say that the bank knows the rules going into the process and is therefore more likely to make that kind of a loan.

Amendment adopted.

Ordered to third reading.

SB 105, an act relative to the rulemaking authority of commissioners of state departments. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Bourque for the committee.

1626B

Amendment to SB 105

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Intent. It is the intent of this act to assure that commissioners of state departments shall have all rulemaking authority unless the legislature specifically and explicitly provides that a subordinate shall be given that authority. This act clarifies that all existing and future rulemaking authority granted to departments organized under the provisions of RSA 21-G, shall be vested in the commissioners of those departments.

2 Rulemaking Authority of Commissioners. Amend RSA 21-G:9, II(b) to read as follows:

(b) Adopt all rules of the department, whether the rulemaking authority delegated by the legislature is granted to the commissioner, the department, or any administrative unit or subordinate official of the department. All rules shall be adopted pursuant to RSA 541-A. ***The provisions of this subparagraph shall control existing legislative enactments. The provisions of this subparagraph shall also apply to*** subsequent legislative enactments unless such enactments shall be specifically exempted from the application of the provisions of this subparagraph by language expressly referring to this subparagraph.

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill specifies that rulemaking authority is vested in the commissioners of state departments, unless the legislature specifically gives that rulemaking authority to a subordinate of the commissioner. The provisions of the bill apply to all existing and future rulemaking authority.

SENATOR BOURQUE: I would like to defer this bill to Senator Hollingworth.

SENATOR HOLLINGWORTH: This bill merely cleans up a problem that has been occurring in the rulemaking process. It allows and makes clear that the commissioners are the ones under RSA 21:G that will be performing the rulemaking tasks. I think that this will end a great deal of dispute and problems that its had since both parties have agreed on this amendment. The amendment can be found on page 15.

SENATOR COLANTUONO: I just wanted to put on the record and state to the members why I voted against this amendment in the committee. The problem currently is that we have different laws which delegate the rulemaking authority to different persons within different agencies. Some of the agencies wanted to clarify that and to make sure that only the commissioner had the authority. The language on page 15 is intended to fix that problem, but, I think, that it makes it worse. The language says that the commissioner has the authority to adopt all rules, "whether or not the rulemaking authority delegated by the legislature is granted to the commissioner, the department or any administrative unit or sub unit. It goes on to say, "the provisions of this sub paragraph shall control existing legislative enactments". In other words, even if there is a current law giving the power to some other body or entity, the commissioner now takes it over. Well, I just foresee that this is going to create tremendous problems. It will give a leverage to those parties who might want to challenge rules and get them declared unenforceable in the courts. But, Legislative Services came in and talked to Senator Hollingworth. The commissioners and the legal staff of various agencies talked to her and stated that this is what they want. They're convinced that this will work. So be it. I just don't believe that it will. I just wanted to alert the members to the problem that I had with it.

Amendment adopted.

Ordered to third reading.

Senator Podles in opposition to SB 105.

SB 171-FN, an act requiring a performance audit of the use allocation of New Hampshire's annual tax-exempt private activity bond capacity. Executive Departments & Administrations committee. Inexpedient to Legislate. Senator Lovejoy for the committee.

SENATOR LOVEJOY: SB 171-FN requiring an performance audit of the use allocation of New Hampshire's annual tax-exempt private activity bond capacity, the Executive Departments and Administration committee voted this out of committee as inexpedient to legislate. We received testimony to the effect that while the two agencies in question did not have a problem with the idea and principal, they both objected to paying the fee. Approximately $100,000 or presumably $50,000, each as well as the indirect cost of tying up their staff to help with the audit. Both of those agencies suggested a study committee be formed if the legislature really wanted to pursue this and specific questions answered. The committee did not feel that whatever the problem, if in fact there is a problem, required this amount of money, or perhaps it would be more tactful to say that the need for this bill was not demonstrated satisfactory to the committee. In one of the written pieces of testimony from the New Hampshire Housing Authority, the authority is of course prepared to cooperate with an audit, such as that outlined in SB 171-FN. However, given the limited range of alternative uses of private activity bonding authority available for the New Hampshire Housing Finance Authority and the straightforward of that use, there is a detailed analysis of private activity bond authority, we are uncertain as to what benefit will be obtained by implementing an audit since New Hampshire Housing Finance Authority would be required to pay one half of the cost of the audit for an estimated $100,000. We respectfully suggest that consideration be given to identifying a less expensive means of providing the legislature with the information it desires about the use of bond cap in New Hampshire. This might, for instance, involve some form of informal legislative study of this issue. We feel at this time that this bill should be voted as inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 185-FN, an act allowing the director of the division of human services to reorganize the rules of the medical assistance program. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Bourque for the committee.

1625B

Amendment to SB 185-FN

Amend RSA 161:4, VI(b) as inserted by section 1 of the bill by replacing it with the following:

(b) The director of the division of human services shall have the authority to reorganize rules of the division of human services medical assistance program under chapter He-W 500 of the division's administrative rules to conform to the requirements of the uniform system of drafting and numbering adopted by the director of legislative services. Changes shall be limited to title, chapter, part, section and subsection designations and numbers and shall be made subject to review by the director of legislative ser-

vices for compliance with the uniform system of numbering and drafting. Such reorganized rules shall become effective when notice of these changes is published by the director of legislative services in the rulemaking register. Changes shall be submitted by the director of the division of human services for review by the director of legislative services before January 1, 1994. Changes authorized under this section shall not affect the adoption or expiration date of rules reorganized under this section.

SENATOR BOURQUE: The Division of Human Services proposed this amendment to RSA 161:4,VI which is identical to the provision granted to the commission of Environmental Services under RSA 21-0:3, IV-A. A major reconsideration of the Administrative Rules of the Division of Human Services relative to administration of the medicaid program under chapter 500. It has become necessary to overcome a series of procedural problems caused by structural deficiencies in the numbering and the drafting of the rules in this chapter.

Amendment adopted.

Ordered to third reading.

SB 198-FN, an act consolidating administrative support for the regulation of health professionals. Executive Departments & Administrations committee. Inexpedient to Legislate. Senator Colantuono for the committee.

SENATOR COLANTUONO: At first glance, this bill looked like a good idea, but when we had the hearing there was a lot of opposition to it among the parties involved. Basically it boiled down to an excessive new layer of bureaucracy above what we already have. I felt that we had very little testimony in favor of it saying that it was a good idea. So we decided to vote it out as inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 229-FN-LOCAL, an act relative to the requirements for sprinkler systems. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1627B

Amendment to SB 229-FN-LOCAL

Amend the bill by replacing section 1 with the following:

1 Rules Changed. Amend RSA 153:5 to read as follows:

153:5 Rules. The state fire marshal shall adopt rules, with the approval of the commissioner of safety, to be known as the state fire code, pursuant to RSA 541-A, to further the purposes of this chapter and such applicable fire safety and building laws as he shall deem necessary for the protection from fire and fire hazards for people in the state and for the general welfare of property and people within the state. The rules may include, but not be limited to, the keeping, storage, use, manufacture, sale, handling, transportation or disposal of highly flammable materials and rubbish, and of flammable fluids and compounds and flammable tablets and may include standards for the materials and construction of receptacles and buildings to be used for any of these purposes. The fire marshal may adopt the most recent edition of the provisions of the national fire protection association code or other recognized codes as rules, in whole or in part; however, such rules shall not require automatic suppressant or sprinkler systems in areas of buildings or additions, in which

the discharge of water would be undesirable as determined by the state fire marshal, or in rooms or areas containing either generators, transformers, telecommunications equipment or facilities or electronic data processing equipment[, or in facilities in which rooms or areas are protected with an automatic fire alarm system]. The rules shall apply to the construction and remodeling of buildings and structures for the containment of flammable liquids and to the new installation and replacement of equipment used in connection with flammable liquids. The rules shall apply to existing buildings, structures or equipment. The fire marshal may exempt a building, structure or equipment from such rules if he finds that such exemption does not constitute a hazard to the public welfare and safety. A reasonable time, as determined by the state fire marshal, shall be allowed to make necessary alterations. Nothing in this section shall be construed to prevent municipalities from adopting bylaws or ordinances relative to a subject area of rules adopted by the fire marshal in accordance with this section if such bylaws or ordinances are no less restrictive than those adopted by the fire marshal.

AMENDED ANALYSIS

This bill eliminates the ability to obtain an automatic waiver from the sprinkler system requirement in the Life Safety Code in cases in which there is an automatic fire alarm system. Under this bill, the granting of a waiver is to be determined on a case-by-case basis.

SENATOR COLANTUONO: Under present law, under the fire code, parties constructing a building can get an automatic waiver from the requirement to have a sprinkler system in rooms or areas protected by an automatic fire alarm. But it is obvious that a fire alarm does not give adequate protection to the building. So the original bill went a little further than we had to go, so the committee amendment is on page 16 where we are simply deleting the language that allows you to get an exemption from the sprinkler requirement when you have a fire alarm system. So with that amendment, we recommend ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 239-FN-LOCAL, an act relative to the public utilities commission. Executive Departments & Administrations committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: This legislation modifies the regulatory process in New Hampshire to facilitate the introduction of new products and services which would benefit the citizens and the businesses of the state. This change would not diminish the authority of the PUC, but rather would allow more expeditious actions on product specific filings. Currently the PUC has 12 months to investigate any tariff. This bill would cut it down to three months for other than general rate cases. The committee voted unanimously to support this bill and we recommend ought to pass.

Adopted.

Ordered to third reading.

SB 45, an act entitling bargaining representatives certified under the public employee labor relations act to a service fee. Insurance committee. Inexpedient to Legislate. Senator Delahunty for the committee.

SENATOR DELAHUNTY: SB 45 proposes to amend RSA 273-A:9. Our public sector bargaining law. It required that certain labor organizations be entitled to a fair share fee from nonmember bargaining unit employees. The proposal would only effect state employees since the section of RSA 273-A to be amended is RSA 273-A:9 which is bargaining by state employees. Why should the Senate intervene on behalf of unions on this issue when we have refused to approve management position on the issue, the right to work bill. Further, why would we do so for only a select group? The union to benefit the most by this legislation has perhaps a 52 percent majority statewide and is in fact a minority union in such units as post secondary technical education, environmental services, administrative services with membership below 50 percent. Our position has always been that union security issues such as union shops and fair share are issues that are best settled between labor management at the bargaining table. We should neither prohibit fair share agreements for right to work nor encourage them through legislation such as SB 45. We urge your support of the committee's recommendation of inexpedient to legislate.

SENATOR LAMIRANDE: I would like it noted that I disagree with the decision of the committee on SB 45 as inexpedient in that it is not fair for individuals to have the same advantages where collective bargaining is concerned without paying their fair share.

Committee report of inexpedient to legislate is adopted.

SB 52, an act relative to workers' compensation liability insurance, return of insurance premiums, and unfair insurance trade practices. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1607B

Amendment to SB 52

Amend the title of the bill by replacing it with the following:

AN ACT
relative to workers' compensation liability insurance
and return of insurance premiums.

Amend RSA 402:81, I as inserted by section 1 of the bill by replacing it with the following:

I. Whenever a person is owed a refund on an insurance premium paid for insurance coverage, the insurance company shall pay such person the refund within [45] ***30*** days of the date upon which the refund becomes due [or within 30 days of the date the refund becomes due in the case of private passenger automobile or domestic fire or homeowners coverage]. When an insurance policy is cancelled by an insured, a refund shall become due upon receipt by the company or its agent of the policy to be cancelled or a signed lost policy release, or the date the company or agent receives the cancellation request from the insured which has been submitted in accordance with provisions of the policy or statute. When an insurance policy is cancelled by an insurer, a refund shall become due upon the date of cancellation as stated in the notice of cancellation. ***For auditable policies, gross unearned premium shall be returned within 30 days from the date of the completed audit. This paragraph shall not apply to retrospectively rated policies.***

Amend RSA 402:81, III as inserted by section 2 of the bill by replacing it with the following:

III. For any refund which is not paid within the specified period, the person to whom the premium is owed shall be entitled to interest beginning on the first day after the expiration of the period, at the legal rate. In cases where the amount of refunds is in bona fide dispute [or where the final premium amount is subject to audit or other adjustment in accordance with policy provisions], the refund shall not become due until the dispute is resolved [or the audit or other adjustment of premium is completed and the final amount of the premium has been determined]. ***In cases where the final premium amount is subject to audit, the refund shall become due upon audit. In any event, return of the unearned premium shall be made within 90 days from the date of expiration or cancellation of the policy. This paragraph shall not apply to retrospectively rated policies.***

Amend RSA 421:10-c as inserted by section 3 of the bill by replacing it with the following:

421:10-c Premium and Loss Information. All insurance companies writing workers' compensation coverage for risks located in the state of New Hampshire shall provide to each policyholder, on at least an annual basis, premium and loss information relative to the risk's workers' compensation experience. Such information shall include loss and claim specific information itemizing: name of claimant, claim number, date of loss, amounts paid and amounts in reserve with a notation indicating whether the claim is open or closed.

Amend RSA 415-B:10 as inserted by section 6 of the bill by replacing it with the following:

415-B:10 Return Premiums. Whenever a financed insurance contract is cancelled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds as soon as reasonably possible, but in any event, within 30 days after the effective date of cancellation. ***On auditable policies, gross unearned premiums shall be returned within 30 days after the date of the completed audit of the insured.*** In the event that a crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured provided that no such refund shall be required if it amounts to less than $1. This section shall not apply to retrospectively rated policies.

Amend the bill by replacing section 7 with the following:

7 Applicability. This act shall apply to all policies with inception dates on or after January 1, 1994.

AMENDED ANALYSIS

This bill requires premium refunds for liability insurance to be made within 30 days after the refund becomes due or, if the policy is auditable, with 30 days after the audit completed. Current law requires such refunds within 45 days after the refund is due.

The bill establishes that disputed premium refunds, once settled, are due upon completion of the audit.

The bill establishes an auditing procedure for the purpose of workers' compensation claims, for determining the state of residence of traveling employees.

The bill is applicable to all policies with inception dates on or after January 1, 1994.

This bill is a request of the insurance department.

SENATOR HOLLINGWORTH: The committee on insurance would like to ask ought to pass with amendment. This bill is mainly a housekeeping measure. It requires premium refunds from liability insurance within 30 days after it becomes due. The current law is 45 days. The bill also establishes an auditing procedure for workers' compensation claims for determining the state of residence of traveling employees. Also with the passage of this bill it will make an insurers failure to provide a written claim loss within 20 days as an unfair practice. This bill is supported by the Insurance Department of New Hampshire. No one testified in opposition. This procedure change was required so that we can continue with our accreditation.

Amendment adopted.

Ordered to third reading.

SB 54, an act relative to workers' compensation insurance rates. Insurance committee. Inexpedient to Legislate. Senator Delahunty for the committee.

SENATOR DELAHUNTY: Senator Fraser was the prime sponsor of this bill and in part of his testimony he says that technically there are some flaws in the bill and since he introduced this legislation, he has had some dialogue with the insurance department and the insurance industry. The idea is to give people fair notice of increases and rates that are forthcoming. But a lot of what is contained in the proposed legislation according to Attorney Nichols is already being accomplished. He acknowledges that the bill probably needs a lot of work in order to make it compatible with the needs of the consumers of the state of New Hampshire and the Insurance Department agrees. The committee urges your support of the committee's recommendation of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 56, an act relative to coverage for intra-family or inter-spousal claims under liability insurance policies. Insurance committee. Ought to Pass. Senator Delahunty for the committee.

SENATOR DELAHUNTY: This bill is a correction of an error that was made in the 1991 session. The Insurance Department submitted a similar bill last year and it was enacted into law. The bill was placed into RSA 412:2-a which applies only to automobile insurance. The intent at the time was to have that bill apply to all liability policies and it was clearly put into the wrong section. This will correct this mistake made last session. This does not repeal the automobile section. It will still remain in that section. We urge your support of ought to pass.

Adopted.

Ordered to third reading.

SB 57, an act relative to accreditation under the insurance laws. Insurance committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

1356B

Amendment to SB 57

Amend the bill by replacing section 4 with the following:

4 Dividends and Other Distributions. Amend RSA 401-B:5, II to read as follows:

II. DIVIDENDS AND OTHER DISTRIBUTIONS.

(a) No [licensed insurance company] ***domestic insurer*** shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(1) Thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or

(2) The commissioner shall have approved such payment within such 30-day period.

(b) For the purposes of this paragraph, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds [the greater of:

(1)] 10 percent of such insurer's surplus as regards policyholders as of the December 31, next preceding[; or

(2) The net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the 12-month period ending the December 31, next preceding, but shall not include pro rata distributions of any class of the insurer's own securities].

(c) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval [thereof], and such a declaration shall confer no rights upon shareholders until:

(1) The commissioner has approved the payment of such dividend or distribution; or

(2) The commissioner has not disapproved such payment within the 30-day period referred to above.

II-a. ALL OTHER DIVIDENDS AND DISTRIBUTIONS. No domestic insurer shall pay any dividend or make any distribution to its shareholders unless the insurer has notified the commissioner of such payment 15 days prior to the payment date. Such notice shall be kept confidential until the payment date of the dividend. The commissioner may order that a dividend not be paid if the commissioner finds that the insurer's surplus as regards policyholders following the payment to shareholders would be inadequate or could lead the insurer to a hazardous financial condition.

Amend RSA 402-F:1, VI as inserted by section 6 of the bill by replacing it with the following:

VI. "Reinsurance intermediary-broker" or "broker" means any person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority [of] or power to bind reinsurance on behalf of such insurer.

Amend RSA 402-F:7, I as inserted by section 8 of the bill by replacing it with the following:

I. [Bind] ***Cede*** retrocessions on behalf of the reinsurer, except that the manager may [bind] ***cede*** facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for [each] such retrocession. Such guidelines shall include a list of reinsurers with which ***such*** automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

SENATOR BLAISDELL: Mr. President and members of the Senate, this bill was introduced by Senator Fraser on behalf of the Insurance Commission. The amendment is on page 17. All that it is, is a technical change to the bill that we have already passed in the years past. Really it comes out of the NAIC which is the National Association of Insurance Commissioners. The committee asks for your support.

Amendment adopted.

Ordered to third reading.

SB 107, an act excluding services performed by real estate appraisers from the definition of "employment" for purposes of the unemployment compensation law. Insurance committee. Inexpedient to Legislate. Senator Delahunty for the committee.

SENATOR DELAHUNTY: During the executive session several of the committee members were committed to various committees throughout the day. We were very limited with our resources available to exec on the various reports that we needed to get out. Since the executive session, Senator Shaheen has come forth with additional information and is prepared to offer a substitute motion, and I am going to defer to Senator Shaheen for the substitute motion.

SUBSTITUTE MOTION

Senator Shaheen moved to substitute ought to pass for inexpedient to legislate.

SENATOR SHAHEEN: What SB 107 would do is exempt real estate appraisers from having to pay into the unemployment compensation fund. All shops are now consistently contributing to the unemployment security fund which leads to an uneven playing field. Some shops have a higher cost of doing business than others. If shop A has to treat its people as employees with its associate cost, shop B is able to continue utilizing independent contractors. Then shop B will have lower cost and, therefore, be able to charge lower fees. If the state were to treat all shops as employee shops, the IRS might be likely to follow suit. And if this happened there would be a further erosion of the competitiveness of in-state appraisers with out-of-state appraisers as their cost of doing business would be less. This bill is supported by the real estate appraisers. DES came in and testified that they really have no position on the bill. Their concern was that it might be the camel's nose under the tent problem. What they failed to explain to the committee and which has subsequently come out, is that we already exempt real estate brokers and certified real estate agents from paying into the unemployment fund. It seems to me that it is consistent to follow suit and exempt real estate appraisers as well. So I would urge the Senate to support the ought to pass motion.

SENATOR COLANTUONO: Does this mean that if a real estate appraiser working on commission leaves the company for any reason, that appraiser cannot apply for unemployment benefits?

SENATOR SHAHEEN: It does, because he would be treated as an independent contractor.

SENATOR COLANTUONO: Thank you.

SENATOR LOVEJOY: I have two questions, if I may? The first question has to deal with the IRS. Has this been cleared as a proper activity from the IRS?

SENATOR SHAHEEN: Well it has, and in fact a recent federal court decision in August of 1992 affirms the independent contractors status of appraisal shops.

SENATOR LOVEJOY: My second question is that I know of some appraisers who work, in fact most of them work on a fee basis, I do know of some that work as a paid employee. It seems to me that as a paid employee status that they are exempted from the protection from the loss of a job that might be unfair to them. Has the committee looked into or discussed with the appraisal people, the amount of people that would be affected working on the static job basis?

SENATOR SHAHEEN: Well the information that we had is that about 80 percent of the appraisers are independent contractors and there are about 400 of those people in the state, so that we are dealing with a very small group of people.

SENATOR DISNARD: Is it constitutional for those other 20 percent out of the 400 that have their rights taken away from them? If they get layed off they don't have an opportunity to receive unemployment?

SENATOR SHAHEEN: Well, as this problem has been explained to me, the difficulty is that the way that the system is set up now, it acts as a deterent to those real estate appraiser shops from hiring people. So that they are not essentially hiring those people. It is being enforced in an uneven basis so that if a shop happens to get audited . . . the way that it works is that the real estate appraisers, as I understand it, just like real estate agents, there is the owner of the shop and he or she would hire people who may not necessarily be licensed appraisers who work under him or her. And the way that it is set up right now, that it is only when those people get audited that they then have to pay into the fund for anybody who may be employed in that shop. So you have an uneven playing field as to how they are being treated.

SENATOR DISNARD: That 20 percent out of 800 is 80 people. I hate to see 80 people disenfranchised.

SENATOR SHAHEEN: No, it isn't 800, it is 400.

SENATOR DISNARD: Then 80 people are being disenfranchised possibly by this legislator who are employed, 20 percent was your figure, to me being employed under a different set of rules without consulting with them, therefore, we are taking away protection of their family which is the purpose of the workers' compensation. I object to this.

SENATOR SHAHEEN: It is not workmens compensation.

SENATOR DISNARD: It is unemployment, excuse me. That is worse.

SENATOR SHAHEEN: Again, I would reiterate, nobody came and testified against this bill. What we heard from real estate appraisers is that this is something that they want because the way that the system is currently set up, real estate appraisers are being limited from being hired in shops.

SENATOR DISNARD: There are still 80 people, according to your testimony, who will be disenfranchised from being protected if unemployed.

SENATOR SHAHEEN: If they get jobs, which according to the testimony, they wouldn't get in some cases.

Recess.

Out of recess.

Adopted.

Substitute motion of ought to pass is adopted.

SENATOR SHAHEEN: You will notice on the floor amendment which should have been distributed to everyone, the language change is in . . . if you look at line 10 of the original bill, that is where the language change is. What we did is because of the concerns about the terminology, "commission or fee split", we just changed the language to read, "service performed by such individual for such employing unit as performed for a fee." It is my understanding that that answers the concerns that were being raised, and I would urge the body to vote for the amendment.

Senator Shaheen offered a floor amendment.

1662B

Floor Amendment to SB 107

Amend RSA 282-A:9, IV(t) as inserted by section 1 of the bill by replacing it with the following:

(t) Services performed by an individual for an employing unit for the purpose of conducting a real estate appraisal assignment, if all such service performed by such individual for such employing unit is performed for a fee.

Floor amendment adopted.

Ordered to third reading.

SB 108, an act relative to uninsured and underinsured motorist coverage. Insurance committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: This bill, right now when you have automobile insurance and you have several policies within the house, you are allowed to stack those policies one on top of the other for coverage purposes in the event that somebody is injured. This would essentially, statutorily say that, and at the same time it would allow for a waiver if you decided that you didn't want to have stacking available and you could actually get a lower premium by doing that. There is language in there of actual form that would be used in the statutes for the waiver if you chose to exercise it. The committee urges that you take positive action and that you pass the bill.

Adopted.

Ordered to third reading.

SB 109, an act relative to automobile liability insurance and tort liability for certain motor vehicle operations. Insurance committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: Right now under the workers compensation law, if somebody is injured, they are not allowed to recover except for under workers' compensation; however, if you are driving with a fellow employee and the fellow employee is negligent, you should be allowed to actually bring an action against the fellow employee as opposed to going to workers' compensation. This allows you to do that. Again, stated that the present law is that if you are injured, even though let's suppose that you're riding with your fellow employee and he or she is driving erratically or they for whatever reason, smashed into another car because of their carelessness, you are strictly limited to workers compensation. This allows you to actually bring an action against the driver who was negligent. If

you are the passenger, you can actually say that you don't want to go under workers' compensation, I want to sue you for your carelessness, and this allows you to do so. The committee report was ought to pass.

SENATOR DISNARD: Senator Russman, why wouldn't the employer, if they are on business for the employer traveling, why wouldn't the employer be responsible?

SENATOR RUSSMAN: Well under the workers' compensation, he would be. But if, let's suppose the other employee is speeding on an icy road and he smashes up and you get hurt as a passenger. The feeling is that you should be allowed to actually sue that driver because he was speeding on this icy road and it should not be the employers position to have to pay for that. It is a little unique, in the workplace itself. The employer has a lot of control in the workplace; in other words, actually in the factory the employer has control. Once you get out on the roads and you are away from the factory or away from the manufacturing facility whatever it is your job, obviously, the employer doesn't have the control that he would have to keep a safe workplace. So out on the road it is a little bit different situation than in the actual factory itself.

SENATOR DISNARD: I assume the employee, that both of them are warned, on the job doing something for the employer, does that mean that now that employee would not sue or does not sue workmens' compensation still be available to them?

SENATOR RUSSMAN: Yes, he could take the option of going for workers' compensation if he so chooses.

SENATOR DISNARD: Thank you.

SENATOR COLANTUONO: If I understand that last answer to mean that under this bill a claimant must choose between the workers' compensation remedy or the third party tort remedy or would they still have the normal remedy, a third party action in then having to pay back any workers' compensation benefits that they may have changed?

SENATOR RUSSMAN: Right, they could do that, that would be okay to do that.

SENATOR COLANTUONO: Okay, thank you.

Adopted.

Ordered to third reading.

SB 160, an act relative to qualifications for unemployment benefits. Insurance committee. Ought to Pass with Amendment. Senator Russman for the committee.

1600B

Amendment to SB 160

Amend RSA 282-A:32, I(a)(2) as inserted by section 1 of the bill by replacing it with the following:

(2) An individual terminates employment in order to accept other full-time employment and is subsequently terminated from such employment for reasons that are not disqualifying under this chapter before earning the requalifying wages set forth in subparagraph (a)(1). Notwithstanding any other provision of this chapter, benefits awarded by virtue of subparagraph (a)(2) shall be charged against the unemployment compensation fund;

SENATOR RUSSMAN: On this one here, it was ought to pass with amendment. The bill allowed certain individuals who voluntarily terminated their employment for another full time job and then having been terminated from that employment before earning enough wages to be eligible for unemployment to actually collect unemployment compensation. In other words, if you were working at one place and you quit your job for a better job or whatever and you had not worked at the second job long enough, time wise, to get the time in, you would still be able to collect unemployment benefits under that scenario. It would come out of the pool.

SENATOR BARNES: Senator Russman, I would appreciate you clearing something up for me. During your blurb on this, you talked about someone working for a person and getting out of the position and going to work for position two. They don't last that long enough in position two, something comes up and they can get unemployment. I would like to know if it is from the pool that effects everybody anyway or is it from number two who let them go or is it from number one?

SENATOR RUSSMAN: It is from the pool.

SENATOR BARNES: You are aware that the pool obviously keeps driving to force up on that TAPE INAUDIBLE.

SENATOR RUSSMAN: Yes. And I would defer to Senator Hollingworth for further explanation of that if that is not explained well enough for you.

SENATOR HOLLINGWORTH: We heard testimony that there were cases where people worked and certainly had a chance to go to another company and were hired by that company, and through no fault of their own they were there, but they weren't there for the three weeks or for whatever it takes for them to be qualified under that. And because of the economic climate these people were to be let go. Certainly it is our intention for people to take and move forward into good positions. What happened in this one particular case is that this guy was seasonal and he let them off every December and so they would have received unemployment during this layoff period. So rather than be layed off and collect, he went to his boss and asked him if he was going to lay him off in December and the guy said that he was, so the guy said, "look, I am going to take this other job that I have been offered in November so that I don't have to make a claim". He went to work for this other company and through no fault of his own, after he was just there for a couple weeks, he was let go. The guy went bankrupt and this poor guy could not claim even though he had been employed for years under the other guy. So it is from the pool, we did make that clear.

SENATOR BARNES: Senator Hollingworth, how much testimony did you get on the other side other than from this one person who had this one problem?

SENATOR HOLLINGWORTH: We got . . . as I believe, I am not sure, I don't have my records here, but I don't recall any opposition.

SENATOR BARNES: I am sorry, that wasn't my question, my question was how many did you hear from with similar cases of this individual that you are referring to?

SENATOR HOLLINGWORTH: There were several cases that were mentioned.

SENATOR BARNES: Did they come in and testify?

SENATOR HOLLINGWORTH: Yes.

SENATOR BARNES: You had more than one person?

SENATOR HOLLINGWORTH: I think that we did, I don't have my record here and . . .

SENATOR BARNES: The only concern that I have, Senator, is that I want to protect the people. Don't get me wrong, please, but I also know that I am sure that you folks have it, you probably had it during your testimony, what is happening to the pool around the state of New Hampshire, how much it is increased in the last 12 months. I am sure that that has been looked at by your committee. Is that correct, when you were looking at this bill?

SENATOR HOLLINGWORTH: Yes. We did. I believe that it was suggested and this was a compromise, and that it should come from the pool, that this was a recommendation, that that is where it should come from.

SENATOR BARNES: Thank you very much.

SENATOR LOVEJOY: Senator Hollingworth, what happens in the case now in the vacation firm that tourist industry climate, it isn't unusual for someone to have to maybe leap frog, maybe the second job the person couldn't perform and was let go. Does this transmit them onto the third job? Who is responsible in the case where another employer is involved? Does it go back to the second one, the first one or does it apply at all?

SENATOR HOLLINGWORTH: In this bill it addresses through no fault of his own, I believe. Again, I am just pulling this off the top of my head because I didn't think that this was going to be a controversy, so I didn't bring my records. If it is not the fault of the employee, then he would be able to claim from the pool.

SENATOR LOVEJOY: But this takes just one generation to transfer. What about if there is another generation involved, does it still cover?

SENATOR HOLLINGWORTH: Do you mean going to the third job?

SENATOR LOVEJOY: Yes.

SENATOR HOLLINGWORTH: I am sorry, I don't think that I can answer that. If you want to give me some time I will try to explore that. I just don't recall the testimony on that subject.

Amendment adopted.

Ordered to third reading.

SB 240, an act relative to the workers' compensation appeals board. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1599B

Amendment to SB 240

Amend RSA 281-A:42-a as inserted by section 1 of the bill by replacing it with the following:

281-A:42-a Appeals Board; Composition; Compensation.

I. There is established a compensation appeals board. The board shall consist of a pool of [21] ***33*** members [at least 11 of whom shall be attorneys], ***of which 11 members shall represent labor, 11 members shall represent employers or workers' compensation insurers and 11 members shall be attorneys who shall be neutral.*** Members of the board shall be appointed by the governor and council from a list of nom-

inees submitted by the commissioner. The commissioner shall submit at least 2 nominees for each vacancy to be filled. Terms of board members shall be 4 years, except the initial appointments shall be staggered so that no more than 1/3 of the members' terms shall expire in the same year. Members of the board shall have at least 5 years' experience in the area of workers' compensation. Appeals from a decision of the commissioner or the commissioner's representative shall be heard de novo by a 3-member panel [at least one of whom shall be], ***composed of*** an attorney [and] who shall serve as chair, ***one member representing labor and one member representing employers or workers' compensation insurers.*** At least 2 like votes shall be necessary for a decision by the panel. The board shall hear appeals, in accordance with RSA 281-A:43, I(b), from the decisions of the commissioner made pursuant to RSA 281-A:43. No person who is an interested party or an employee of an interested party shall participate as a member of the panel. The board shall conduct its proceedings in such a manner as to ensure a fair and impartial hearing.

II. The board shall be an administratively attached agency under RSA 21-G:10, to the department of labor[, but shall operate independently from the department].

III. Members of the board shall each receive $150 per diem for each day devoted to the work of the board and shall be reimbursed for necessary travel expenses.

IV. The commissioner shall appoint an administrator from existing full-time staff for the board who shall serve at the pleasure of the commissioner. The administrator shall perform all the administrative duties of the board, including but not limited to scheduling the docket, providing the liaison between the public and the board members, conducting the meetings of the board, and assigning committees to address regulatory legislative and policy issues.

Amend the bill be inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Transition.

I. Persons appointed to the compensation appeals board after the effective date of this act shall be designated upon appointment as representing labor or employers or workers' compensation insurers, or as attorney-neutrals, as the case may be.

II. Members of the compensation appeals board in office on the effective date of this act shall, within 30 days thereafter designate themselves as representing labor, employers or workers' compensation insurers or as attorney-neutrals, by written notification to the commissioner. Such designations shall remain in effect for the duration of the member's term of office.

AMENDED ANALYSIS

This bill requires the labor commissioner to appoint an administrator for the workers' compensation appeals board. The bill also changes the membership of the board to 33 members from 11 members and clarifies the membership of the 3-member panels appointed to hear the appeals.

SENATOR HOLLINGWORTH: The committee on insurance would like to ask ought to pass with amendment on SB 240. This bill is a reconstruction of the Workmens Compensation Appeals Board. The board is currently comprised of 21 members. This bill would change the number to 33

which 11 would be from the labor field, 11 would be from the insurance, and 11 would be from the neutral Attorneys. Each three member panel would be comprised of one member from each of the fields to insure fair representation whereby before this was not guaranteed. In addition, there would be an administrator appointed from the existing board who will act as the liaison among the members who will be required at no additional cost. This bill was supported by Commissioner Flynn and it is a simple housekeeping measure to ensure fairness and efficiency.

Amendment adopted.

Ordered to third reading.

SB 243, an act relative to an agricultural workers' compensation exemption. Insurance committee. Inexpedient to Legislate. Senator Delahunty for the committee.

SENATOR DELAHUNTY: While recognizing the high cost of workmens compensation and the pride of the agricultural industry, the committee felt that there were too many problems with this bill. The major problem here is that this bill shifts these costs directly to the farm workers who traditionally simply can't afford them. Another problem is that this bill is a dramatic change and a drastic measure. It leaves a whole catagory of workers unprotected from what can be the most catastrophic of accidents. There is no such thing as a small accident with a chain saw, there is no such thing as a small accident with a hay bailer. So you have a lot of catastrophic injuries which include the loss of limbs and they get too costly and $100,000 certainly won't cover it. We urge your support of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

Recess.

Out of recess.

HOUSE MESSAGE

The House of Representatives has passed a Resolution with the following title in the passage of which it asks the concurrence of the Senate. HCR 10 encouraging Congress to examine federal banking laws and regulations to determine which laws and regulations are overly restrictive and burdensome to commercial banks and to repeal those laws and regulations.

SUSPENSION OF THE RULES

Senator Fraser moved that the Rules of the Senate be suspended to dispense with the holding of a hearing, the notice of a committee report in the calendar, and that the bill be put on Second Reading at the present time.

Adopted by the necessary 2/3 vote.

Senator Fraser offered the following resolution:

HCR 10

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

encouraging Congress to examine federal banking laws and regulations to determine which laws and regulations are overly restrictive and burdensome to commercial banks and to repeal those laws and regulations.

Whereas, New Hampshire banks have a commitment to meet the financial needs of their communities; and

Whereas, New Hampshire's economy has suffered greatly in the past 2 years; and

Whereas, New Hampshire banks must remain healthy and profitable in order to participate in the state's economic recovery; and

Whereas, Congress and federal regulators have reacted to the savings and loan crisis by enacting onerous laws and regulations; and

Whereas, these new regulations and laws, specifically FIRREA and FDICIA, mandate that banks apply many more restrictive guidelines in their management and lending practices; and

Whereas, the American Bankers Association estimates that compliance with these new restrictive guidelines will cost commercial banks nationally over $10 billion annually, a staggering sum which is paid by both banks and their customers; now, therefore, be it:

Resolved, by the House of Representatives, the Senate concurring:

That the Congress is encouraged to examine federal laws and regulations which relate to the regulatory and paperwork burden of commercial banks and to repeal those laws and regulations which are unfairly restrictive and burdensome; and

That copies of this resolution shall be transmitted by the clerk of the house of representatives to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the New Hampshire Congressional delegation.

SENATOR FRASER: Mr. President, I can't recall the exact date, but it was certainly the very first effort by the Senate Banks committee and the House Commerce committee. We had a joint hearing on preparing this Joint Concurrent Resolution to be directed to the President of the United States, to the Senate and to the House of Representatives and to all Governors and Chairs of Banking committees in both the House and Senate across the country. The idea of HCR 10 is to request that the Congress take a good hard look at all the regulations and laws that affect the banking community and to get rid of all of those that are serving no useful purpose. It also reminds President Clinton that under his executive powers some of the things that can be done without the necessity of going through the congressional arena. Mr. President, we would hope that the Senate would adopt HCR 10 so that we can get it in the mail before we go on vacation.

SENATOR BLAISDELL: Mr. President and members of the Senate, I rise in real strong support of this Resolution. I think that it is one of the most important Resolutions. Resolutions usually, you figure, don't have an impact. But I think that this message has to get across to the federal government. One other message that really wasn't mentioned by Senator Fraser at that hearing, what the FDIC has done to this state is horrendous. We have got one person in this state who walks around this state representing FDIC, who I think is obnoxious; and I would like to tell him right to his face, because what he has done, he has said that, "the character loans are no more good in this state". It was not character loans that put the banks in trouble in this state, I can tell you that right now.

I would hope that you would send this along and send a strong message. And I would also like to send a message to get this guy from FDIC the hell out of the state of New Hampshire. Send him to some other place. They sent him from Massachussetts back up to here and we don't need him. Get him out so that we can get our banks to loan money to our people.

SENATOR FRASER: As long as Senator Blaisdell has taken the opportunity to support HCR 10, I thought that I would express myself. First of all, we played to a full house, there was standing room only at the hearing. We had to have two hearing rooms over in the LOB. Two of the speakers that were most impressive were Governor Merrill and Congressman Zeliff. They feel that this is a vital Resolution and they urged us to get it to Washington just as soon as possible. Thank you, Mr. President.

SENATOR W. KING: I support this Resolution strongly, but I think that it is also important to say a little something about it, not only on the FDIC. There is plenty of blame to go around in this and the bankers share in that blame. Now we have to stop blaming one another and try to solve the problems. There were plenty of loans that were called character loans which were nothing more than a deal made between a bunch of guys out on a golf course, and they contributed to the problem as well. What we have to ask Congress to do, together, is to say that these regulations are far too burdensome, and in fact they are stifling our ability to grow our economy in the state of New Hampshire. President Clinton recognized that last night in his message to the Congress, and I hope that he will take this message as our support of what he said.

SENATOR LOVEJOY: I, too, support this Resolution. I would like also to send a message to Congress that in the transfer of property from the government agencies to the purchasers, the buyers who compete in the market with the rest of the real estate on the market are exempt from paying New Hampshire real estate taxes. That seems to me that that should be addressed in the Congress and that we should have a level playing field. What is fair for the private sellers here in New Hampshire should also be imposed on those people who compete with them for the sale of homes.

SENATOR LAMIRANDE: I, too, support HCR 10, but I would like to make a statement. My statement is that I feel that our government should be looking to use the taxpayers dollars for the support of the taxpayers and not in bailing out savings and loans. I would like this message sent to Congress. I have also spoken to the current President, President Clinton about this same matter. That if Congress were to subsidize loans it would get the state out of the mess that it is in right now, the economy. I am talking about the mortgage bankers, the bankers per se as far as loans out there on the books that are first of all, too over priced in rate and the payments are too high and people cannot meet their obligations. They are having a difficult time. If the taxpayers monies were used for the benefit of the taxpayers we wouldn't see that happen.

Adopted.

HCR 10 is adopted unanimously.

SUSPENSION OF THE RULES

Senator Colantuono moved that the Rules of the Senate be suspended to dispense with the holding of a hearing, the notice of a committee report in the calendar, and that the bill be put on Second Reading at the present time.

Adopted by the necessary 2/3 vote.

First and Second Reading

SB 248-FN-A, establishing a committee to study the feasibility of locating a sports arena in southern New Hampshire and making an appropriation therefor. Economic Development committee. Sponsors:Senator Colantuono, Senator Blaisdell, Representative Franks, Representative Peyron, Representative Jasper, Senator Barnes, Jr., Senator Delahunty, Representative Malcolm and Senator Russman.

SB 84, an act relative to the disposition of land use fees by municipalities. Public Affairs committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This bill is an enabling piece of legislation. It merely enables the cities and towns to vote whether or not the planning boards should remain the sole voice in the appropriating of fees collected as impact fees. If the city or town votes to give that authority to the planning department, then as now, there would be no change. If the city or town votes that these decisions should be the prerogative of the governing body of the city or town, then the responsibility for the impact fee application would no longer remain with the planning board, but would be with the governing body. We recommend that this be passed as ought to pass.

SENATOR COLANTUONO: Under present law is the planning board allowed to expend all of the impact fee money or only that which is necessary to implement the law?

SENATOR LOVEJOY: They are allowed to spend any of the impact money on impacts caused by the growth of the urban development. They have the sole authority at the present time.

SENATOR COLANTUONO: In other words, if an impact fee is collected from a developer putting in a subdivision because of the impact on schools, doesn't that money go to the school district?

SENATOR LOVEJOY: That is a sole prerogative of the planning board. They're the only voice in how that money is spent. The elected body, the governing body, has no voice whatsoever. This merely would enable the governing body to vote whether or not to allow the planning board to continue with that authority or to retain it among themselves.

SENATOR COLANTUONO: Thank you.

Adopted.

Ordered to third reading.

SB 119, an act establishing a procedure to allow secession of one part of a municipality for the purpose of establishing a new municipality. Public Affairs committee. Inexpedient to Legislate. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, I served on the study committee that worked on this bill. We worked long and hard, we have worked all summer long. We felt that we were expected to create a vehicle that could be further worked on by both bodies of the House and Senate. Nobody, I think, on the committee was actually satisfied with the result; however, we did come out with a vehicle. In further speaking with people, people have told me that they feel that really this legislation is not needed. The last instance we had of any kind of difficulty was 30 years ago. If in fact we don't have any difficulty in the next 30, perhaps times will change, but every circumstance is somewhat different. So the committee decided that this bill was not needed at this

time. Matter of fact, it might even hamper the very well working conditions between Laconia and Weirs, which happens to be working very well now, in that Laconia would not have the incentive to work as hard with the Weirs situation as they currently do if in fact we do pass this legislation. I urge inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 120, an act establishing a committee to study the accountability of local agencies receiving money from towns. Public Affairs committee. Inexpedient to Legislate. Senator Barnes for the committee.

SENATOR BARNES: I will make it short and sweet. On SB 120 the majority of the committee didn't feel that there was a need to establish a committee. The report came out as inexpedient to legislate. I would ask you to uphold the committees decision.

Committee report of inexpedient to legislate is adopted.

SB 121, an act nullifying the law which amends RSA 457:29 relative to marriage license fees effective July 1, 1994. Public Affairs committee. Ought to Pass with Amendment. Senator Roberge for the committee.

1623B

Amendment to SB 121

Amend the title of the bill by replacing it with the following:

AN ACT
nullifying the law which amends RSA 457:29 relative to marriage license fees effective July 1, 1994, and raising the fee for marriage licenses.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3.

2 Fee Increased. Amend RSA 457:29 to read as follows:

457:29 Marriage License Fee. The fee for the marriage license shall be [$40] ***$45*** to be paid by the parties entering into the marriage. The clerk shall forward [$33] ***$38*** from each fee to the department of health and human services for the purposes of RSA 173-B:13. The clerk shall retain the remaining ***$7*** as his fee for making the records of notice, issuing the certificate of marriage, and forwarding the [$33] ***$38*** portion of the marriage license fee.

AMENDED ANALYSIS

This bill nullifies the law which would reduce the fee for a marriage license from $40 to $20 effective July 1, 1994, and raises the fee for marriage licenses to $45.

SENATOR ROBERGE: Mr. President and members of the Senate, the amendment calls for increasing the costs of a marriage license. The reason we feel that this is very much in order at this time . . . I have two articles here, "the Attorney General wants more attention paid to spouse abuse", "House to face legislation on domestic dispute". We find that there are a lot of domestic disputes and we feel that the extra money would be well used to protect mostly women, but there are a few men, and children. We feel that this is a growing problem and the issue would be well served to be funded just a wee bit better. Thank you.

Amendment adopted.

Ordered to third reading.

SB 122, an act entitling Persian Gulf War veterans to the standard $50 veterans' tax credit. Public Affairs committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, the committee felt that the Pursian Gulf War veterans should be included with our other deserving veterans. Therefore, we wanted SB 122 to pass. Thank you.

Adopted.

Ordered to third reading.

SB 187-FN, an act relative to public utility ratemaking. Public Affairs committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, we heard a lot of testimony on having to do with before a utility can charge a customer for plant and equipment and capital budget improvement. It first has to be determined if the improvement is to be prudently used and useful. The committee felt that this was certainly not a high standard and it should be met.

Adopted.

Ordered to third reading.

SB 97, an act establishing a committee to study parking at Hampton beach state park. Transportation committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, all that this bill does is to establish a study committee to examine the parking at Hampton Beach State Park. Parking was a problem when I was a little child and it is still a problem and it very much deserves our attention. Thank you.

Adopted.

Ordered to third reading.

SB 104, an act relative to the repair period allowed under the "lemon law." Transportation committee. Inexpedient to Legislate. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, this particular bill, SB 104 was withdrawn by the sponsor. The issue is no longer a problem and he suggested inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 168-FN, an act relative to oil terminal facility registration and small fuel oil facilities. Transportation committee. Ought to Pass with Amendment. Senator MacDonald for the committee.

1319B

Amendment to SB 168-FN

Amend RSA 146-E:6, II as inserted by section 1 of the bill by replacing it with the following:

II. Owners of facilities eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-site and off-site cleanup of fuel oil discharges in amounts not to exceed $500,000, incurred on or after January 1, 1993.

SENATOR MACDONALD: The amendment changes a date in the text. Basically what this does is the same that what we have on gasoline. It sets up a fuel oil discharge cleanup fund. Under this bill it is two-tenths of one percent. Under the gas bill it is six-tenths of one percent. The only person that spoke against the bill was a member of the committee who was worried about would they have the time to handle both the gas and oil. The Department of Environmental Services came out very strongly for the bill. I will answer any questions that you may have.

SENATOR DISNARD: Senator, I was not a member on your committee, but I was listening to the testimony and what I heard was that the gentlemen, an oil gasoline dealer that is already on that committee, felt that under the size of the committee, they needed additional staff to do that. Also, I heard him say, "that if an amount of money is collected and the other testimony, and all of the other money that you have raised, $500,000 was utilized, then the rest of the people would receive nothing, it wouldn't be prorated". Am I to understand that if you have an accident in your house in January and I have one in August and this fund is depleted, I am not covered, the heck with me, I lose my home?

SENATOR MACDONALD: It is going to go before the board and the most needy case will be held first. I think what they are trying to do is to build the fund up to $5 million as a cutoff point and then if it goes below $4 million they will start building it up again.

SENATOR DISNARD: Will you clarify to me, Senator, if they are going to take the most needy cases, are they going to wait until the end of the year, review and not pay any amount and then decide who has the most needy case? How are they going to determine if it is case by case, what the most needy case is?

SENATOR MACDONALD: I feel that it would go before the board and then reviewed. I would like the sponsor to help me with this question.

SENATOR W. KING: What is the question?

SENATOR DISNARD: Sorry, Senator, is my question clear?

SENATOR W. KING: I didn't hear your question for me.

SENATOR DISNARD: What I heard in the testimony was that an individual that is already involved on the board for cleanup, indicating the present staff could not handle this. He also indicated that there are some spills in this state that the $500,000 could be utilized for that cleanup. I also heard from other people testifying that it would be on a first come, first serve basis. I interpret that as someone having an accident in January and they would be covered, if I had one in October, I wouldn't be covered. Then I heard a Senator say, "they would look at the most needy cases". Are they going to wait until the end of the year to pay out and decide?

SENATOR W. KING: I think that Senator MacDonald was not incorrect in what he said, both things are true. It is on a first come, first serve basis; but, if there are a number of people who apply, then they would have to create a hierarchy of need, based on what the dollars were available. If there were a number of people who applied at the beginning of the process or at a specific time.

SENATOR DISNARD: I don't understand.

SENATOR W. KING: Okay, let me try again. If three different people applied in the month of January, then they would look at those based on need while the fund is being built up. Once the fund is built up, it doesn't seem to me that that's going to be a problem. But financially, there is no other way to do this without allocating the $5 million for the fund to begin with and then having that paid down.

SENATOR DISNARD: Thank you.

SENATOR LOVEJOY: I want the record to clearly show that this Senator does not feel that this is the time, nor the economy that we should be talking about raising fuel oil cost for residents. I feel very uncomfortable with the statement in the fiscal impact section that says, "the Department of Environmental Services indicates that this bill will increase, state, county and local expenditures by an undetermineable amount". I find that very disturbing. I find it disturbing under the methodology where it says, "there will be an increase in heating oil cost of approximately two cents a gallon." Now how are we going to tell our people in Berlin and Colebrook and Portsmouth and Rochester, in this cold season, that we just voted to raise their home heating oil cost by two cents a gallon? This Senator certainly opposes the bill.

SENATOR SHAHEEN: Senator King, I am sure that you would agree with me that there is some concern about the cost of this program. But I guess the question that I have and maybe you know the answer to this is, while there would be some cost involved in this program, would there not also be much greater cost involved to the state in needing to cleanup spills should they happen, if all of those costs then have to be incurred by the state?

SENATOR W. KING: That is correct. First let me make it clear that we are talking about two-tenths of one cent per gallon. We are not talking about a lot of money. In fact, in many cases the state would end up paying for a spill if this fund wasn't established in the first place.

SENATOR SHAHEEN: We would pay the entire cost of the spill, is that correct?

SENATOR W. KING: That is correct. What this allows for is for us to work with an owner to clean that up. Frankly, there are a lot of small mom and pop operations around the state that could really use the help, not only to clean up, but to stay in business.

SENATOR Wheeler: Don't we already have a fund in place that helps gas stations and other people clean up with the same type of an idea with the tax at the wholesale level?

SENATOR W. KING: That is correct and this extends that to possible spills that aren't covered by that.

SENATOR WHEELER: Would those spills, could they be at a homeowners location or is this just for businesses? Could it be if someone's oil tank burst or something?

SENATOR W. KING: I think that it could be either one.

SENATOR WHEELER: Thank you.

SENATOR LOVEJOY: Senator King, would you believe that I know that it is two-tenths of a cent and not two-cents? I misstated that in my comments; however, it doesn't dissuade my argument. It is just how much or what a degree of an increase it is. I can't possibly justify an increase in home heating oil cost.

SENATOR COLANTUONO: I am unclear about the difference between the oil disbursement fund that presently exists under 146 and this bill? What is the difference between this bill and the current law that we already have?

SENATOR W. KING: This bill extends it to fuel oil.

SENATOR COLANTUONO: What does 146-D cover if not fuel oil?

SENATOR W. KING: Gasoline. It adds fuel oil, not only for the dealership, Senator Colantuono, but at the home of an individual.

SENATOR J. KING: I want to say that I approve of this because that is quite a bargain for two cents for 10 gallons of oil.

Amendment adopted.

Ordered to third reading.

Senator Colantuono in opposition to SB 168-FN.

SB 177-FN, an act relative to the Sagamore Creek bridge on U.S. Route 1 in the city of Portsmouth. Transportation committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

1598B

Amendment to SB 177-FN

Amend the title of the bill by replacing it with the following:

AN ACT

relative to the Sagamore Creek bridge on U.S. Route 1 in the city of Portsmouth and the Cascade Street bridge between the city of Berlin and the town of Gorham and making an appropriation therefore.

Amend the bill by replacing all after section 1 with the following:

2 Appropriation. The sum of $618,410 is hereby appropriated for the biennium ending June 30, 1995, to the department of transportation for the cost of environmental and preliminary engineering studies, purchase of rights-of-way and construction of the Cascade Street bridge, bridge number 225/038, which crosses the Canadian National Railroad between the city of Berlin and the town of Gorham. The department is authorized to accept federal and private funds that may be available for these projects, and this appropriation shall be reduced by the amount of such funds. If the city of Berlin or town of Gorham begin interim repairs on the Cascade Street bridge the department shall reimburse the city or town for the cost of such interim repairs. This appropriation shall be nonlapsing and is in addition to any other appropriation to the department of transportation for the biennium.

3 Bonds. To provide funds for the appropriation in section 2 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of $618,410 and for said purposes may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A, provided that the bonds shall have a maturity date of 20 years.

4 Payment. The payment of principal and interest on the bonds and notes issued for the project in section 2 of this act shall be made when due from the highway fund.

5 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill requires the commissioner of transportation to widen the Sagamore Creek bridge on U.S. Route 1 in the city of Portsmouth.

This bill makes an appropriation to the department of transportation for the construction of the Cascade Street bridge between the city of Berlin and the town of Gorham.

If the city of Berlin or town of Gorham begin interim repairs on the Cascade Street bridge the department shall reimburse the city or town for the cost of such interim repairs.

SENATOR LAMIRANDE: This is for the purpose of Senator Disnard. SB 177 amends the title of the bill by replacing it with the following, relative to the Sagamore Creek bridge on U.S. Route 1 in the city of Portsmouth and the Cascade Street bridge between the city of Berlin and the town of Gorham and making an appropriation therefore. SB 177-FN addresses two bridge projects for the Department of Transportation in the state of New Hampshire. First it requires that the commissioner of Transportation widen the Sagamore Creek Bridge on U.S. Route 1 in the city of Portsmouth. Secondly, the bill makes an appropriation to the Department of Transportation for the construction of the Cascade Street bridge between the city of Berlin and the town of Gorham. The Sagamore Creek bridge on U.S. Route 1 presents a hazardous situation to all drivers. In order to rectify this growing problem and to ensure the safety of all New Hampshire residents, traveling on this bridge, the Department of Transportation needs to widen the bridge. The Cascade Street bridge located partially in the city of Berlin and in the town of Gorham has been in an emergency situation for years. The Cascade Bridge is currently posted at a reduced limit of six tons. Its previous posting was 15 tons. This posting limit of six tons although being the most prudent approach from a public standpoint, has placed severe restrictions and added cost on both municipalities. The only vehicle that can safely utilize the bridge is the town's ambulance; all other vehicles must utilize an alternative route to serve the residents which involves costly time delays and services and hampers the effectiveness of these same services. The city of Berlin and the town of Gorham have set aside the agreed upon one-third of the cost that it would take to replace the bridge. In past meetings the Department of Transportation has stated that once these municipalities secured their share of the cost then the state would begin construction on the bridge. The Department of Transportation agreement was to supply two-thirds of the cost. The last important factor that I would like to mention that the state will save $60,000 if the Department of Transportation proceeds with the replacement of the Cascade Bridge this year. Therefore after considering the facts involved with both bridges, the Transportation committee has recommended that SB 177-FN ought to pass.

SENATOR DISNARD: Senator, under the analysis and in the bill, does "require" mean the same as "highest priority"?

SENATOR LAMIRANDE: I knew that you were going to ask that, Senator. No.

SENATOR DISNARD: Thank you.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 194-FN, an act relative to seat belt legislation. Transportation committee. Ought to Pass with Amendment. Senator MacDonald for the committee.

1601B

Amendment to SB 194-FN

Amend RSA 265:107-a, II as inserted by section 2 of the bill by replacing it with the following:

II. Any person who is a passenger in a motor vehicle shall be restrained by a properly worn safety belt system, unless the passenger is under the age of 5, in which case the passenger shall be restrained by a specially designed detachable or removable seat which meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. section 571.213.

AMENDED ANALYSIS

The bill requires the use of safety seat belt systems or child restraints by drivers and passengers in certain motor vehicles.

A person violating this law would be subject to a fine up to $30. The bill exempts persons with a physically disabling condition preventing the use of seat belts from the requirements of the law. Motor vehicles manufactured without seat or safety belts and motor vehicles regularly used to transport persons for hire are exempted from the law. The bill does not apply to rural letter carriers of the United States Postal Service.

The bill also holds harmless a physician who certifies a physically disabling condition from any liability for injuries incurred by a driver, passenger, or other person resulting from the exemption.

SENATOR MACDONALD: This is going to be a nice quiet bill, too. The committee had a hearing on this bill and basically there were very few people that came to oppose it. In other words, over a period of years my position has been that we educate people instead of having the seatbelt law. But after the hearing I did not have enough evidence. There really wasn't anyone that came in there to oppose this bill. So the committee recommended ought to pass. The amendment is just to correct a minor section that had to be corrected about age. I think that I would rather have the main sponsor go into the bill and talk about it.

SENATOR MCLANE: Mr. President and members of the Senate, I want to make very clear that I am not the main sponsor. The main sponsor is a man who, because of his position, cannot speak to you today. But I do think that a story that he has to tell is one that carries a great deal of weight with me and the other sponsors. Senator Hough feels clearly that if his young son had not been wearing a seatbelt that he would not be here today. To listen to him tell that story, I don't think that we will make him tell it again. It was a very emotional part of the hearing that we had on SB 194. Senator Currier also has personal stories to tell. He worked for many years on an ambulance. His thought is that if you could spend a few days picking teeth out of a dash board, you too would be in favor of this bill, as have 40 other states in the United States. My personal story is unfortunately going off to the Christa McAuliffe Planetarium to the 3 o'clock show. I very carefully arranged to have my 11 year old grand daughter here today. She is beautiful, if I do say so myself, with her red hair. She is about to be 12 and she informed me that she will not have to wear seat belts after next year. If you could have heard her grandmother telling her that she would never get into a car with her without a seat belt on. But I want to say a couple of things; first of all, almost every

other state has a seat belt law. And secondly, those that say "that it isn't our business", don't realize that we all pay the bills. The evidence about seat belts is that if you have one on it is going to cost everyone thousands of dollars less than if you don't have one on. I want to be clear about the amendment. The amendment makes it very clear that all children under 12 must wear a seat belt in the front and back seat. Those five and under must be in some sort of a special seat. If you want to put your mother-in-law or your father that won't wear a seat belt in the car, you can put them in the back seat and they don't have to wear a seat belt in the back seat or you can ask for a medical exemption and put them in the front seat and let them take their chances. In general, in all of the other states that have this law, the cost of medical care, the number of accidents, the number of fatalities has gone down so extraordinarily that I cannot believe that a thinking person would not vote for this bill.

SENATOR ROBERGE: Mr. President and members of the Senate, in the past, consistently, I have always opposed this type of legislation. I, too, have a story to tell and it happened right here in Concord last summer on the corner of South State Street and Thompson. I was driving north on South State Street on my way to the State House and a pickup truck, I don't know if he stopped at the stop sign and then just started back up, but he just didn't see me at all and we were both going very slow. But he didn't see me. I saw him coming and I stopped, but he kept coming and I watched him. I could see his face and he still didn't see me and I don't know why. My car was stopped and he went slamming right into the front of my car. It took $4,000 to fix it. I was wearing a seat belt and I did get a bumped up knee and a bump on the front of my head, but I am sure that I would have gone through that windshield, so I am a believer. That convinced me. I also wear my belt now and I have for quite some time.

SENATOR LOVEJOY: I guess that this is probably a time for sharing stories. My story is a personal one. I wanted to share it with you because it is a story quite different from the results of your story. Several years ago, when they were relocating the Hampton toll gate on Interstate 95, when the highway was under construction and I owned a small restaurant in Hampton and I also managed a radio station in Portsmouth. My schedule would take me to Hampton to open the restaurant and then to the radio station in Portsmouth. One morning I was driving down on November 17 about 15 years ago. I remember driving down Interstate 95 and my next memory was talking to the doctor at Massachusetts General. He was taking me for neurosurgery. What happened was that a big asphalt paving machine crawled across the highway and blocked both lanes, and I hit him in the passing lane, never seeing the dark green machine without lights or without driver. I stayed for two months in Mass General and I asked the neurosurgeon, I said, "what would have happened if I would have had a seat belt on?" He said, "very likely, you wouldn't be with us here today." I said, "why do you say that?" He said, "because if anything changed in the makeup of your accident, you would have been killed, or you could have been killed." So I guess that the message that I am telling you is I guess that there are success stories on either side of this discussion. My success story, praise God, is one that because the conditions were as they were, I survived that accident and I am here to tell you about that. So I say to you at the time, and I do use seat belt now, but that is my choice now. And I think that that choice is important. I think that the results of my action is important. I think that we should allow those people who are responsible and adult to make the

choice of whether or not that they want to wear a seat belt. In my case, in that particular situation, I am lucky that I wasn't wearing one. Thank you very much.

SENATOR LAMIRANDE: Story time. In the past I have been in opposition to this bill. My dad who is one of these stubborn Italians has difficult times.

SENATOR COLANTUONO: Hey!

SENATOR LAMIRANDE: Hey, I am Italian too, Senator Colantuono. So that is why I can say that he is a stubborn Italian. He had difficulty with any kind of mechanism per se. I tried to instill in him that, "you really should buckle up dad". If he saw me buckle up he would buckle up. Well recently he was involved in an automobile accident causing over $4,000 damages to his vehicle. He was hit on the driver's side and he had buckled up. The officer told me that if he hadn't buckled up that he would have gone through the windshield. So I support this bill.

SENATOR DELAHUNTY: I rise in opposition. I would just like to say a couple of things. I am not going to tell a story, but I think that most of you know that I was involved in a pretty serious accident on December 11. Senator McLane, I think that you saw some of the bruises. She didn't see them all because a lot of them occurred two weeks later. Senator McLane, if this bill passes and that accident had occured after this bill passes . . . at the time of the accident I did not have my seat belt on. The steering mechanism was driven right through the drivers seat. Had I been wearing my seat belt I wouldn't be here today talking about it. If you pass this bill would my family then be in a position to sue the state because of the mandate?

SENATOR MCLANE: As an observer of your bruises . . .

SENATOR DELAHUNTY: Some.

SENATOR MCLANE: Some.

SENATOR SHAHEEN: Which ones?

SENATOR MCLANE: I am very glad that you are here today.

SENATOR DELAHUNTY: Thank you, Senator, me too.

SENATOR MCLANE: The theory was that because you landed in the back seat, you were okay.

SENATOR DELAHUNTY: It was a van, Senator.

SENATOR MCLANE: The fact that 40 other states have this law without the problem that you site, would be to me, evidence that you could not sue the state if it was felt that in the very rare circumstances such as a car going off of the road into a river, that you could think up, that you would not be happy that you had a seat belt on. I do not believe that you could sue the state.

SENATOR DELAHUNTY: I wouldn't be doing the suing, Senator, but my family might. Thank you, Senator. I would just like to mention a couple more remarks. You mentioned the reductions in health insurance, Senator. If I could just suggest that if all of you would urge the Department of Transportation to take a look at the guardrails along the roadways, I could tell you that I was driving the van and that height is good for a car, a low car, but pickup trucks and vans, I really would like to have you consider that, to take a look at it later on, because if the height was up about two more feet it would help a lot to reduce cost, I am sure, because it would prevent that type of an accident. I just can't believe, we

are all adults and I think that safety belts probably do help out in 65 or 70 percent of the incidents involved, but I just can't believe that we as adults have to have further legislation to tell our peers that they have to wear these and that they will be penalized if they don't. I think that it is wrong, they are there and we all know it, and that should be our prerogative. Thank you very much.

SENATOR MCLANE: Senator Delahunty, your idea about having the guardrails higher is an interesting one. But, I wonder if in that circumstance as in the circumstance of a state requiring seat belts that there would be matching federal funds. Isn't it true that in this bill there is about $7 million in federal funds that will come to this state because of the seat belt law?

SENATOR DELAHUNTY: That may be true, Senator, but I don't really look at it in that way. I don't look at matching funds as an item of safety. I think that when something is suggested or something that is going to help us and prevents accidents and preserves lives, I am not looking for matching funds. I think that the point being made is that it can help prevent further injury. And I think that we are both in the same boat, basically.

SENATOR WHEELER: Senator Delahunty, isn't it true that under the new Intermodal Surface Transportation Act, the 10 percent funds that Senator McLane is referring to that we would lose and indeed we wouldn't lose those if they would just have to be spent for other safety items such as heightening your guardrails. We do not lose the money.

SENATOR DELAHUNTY: Thank you, Senator, I believe you.

SENATOR COLANTUONO: Thankfully, I don't have a story to tell, but in my profession I have been involved in looking at a lot of different accidents and I just want to state the reason why I am going to vote against this bill. Right now air bags are becoming more and more popular and they are going to be standard equipment on all cars pretty soon as far as I can see. An air bag is much more efficient than a seat belt in protecting against a front end accident, but there are side collisions, such as you would have on a crossroad where a car comes into you, that are very dangerous if you have a seat belt on. If you don't have a seat belt on you could be pushed across and a serious accident could be prevented. I am sure that there are many intelligent drivers out there that have seat belts in their cars, but who don't want to take the risk of being tied in with a seat belt in the case of a side impact accident. I don't think that we should tell them that if they can't exercise that option in their own mind after studying the issue, I think that they are adults and they are driving and that they should be able to make that choice; therefore, with the advent of more and more air bags, I think that this is a bad bill and I will vote against it.

SENATOR SHAHEEN: Since we are telling stories, I remember as a seventh grader in English class debating mandatory use of seat belts. I remember it very specifically because I was on the side that said that you shouldn't have to use your seat belt. An interesting thing about that discussion is that that was long enough ago that we really didn't have any studies about what the effects of wearing seat belts were. They had just come out as mandatory equipment on cars. But we know the answer to that question today. The fact is that seat belts save lives. Yes, there may be specific instances where and because of the way that the accident happened, it influenced if you didn't have your seat belt on, you were better

off. But that is not true across the board. The fact is that we know that in the overwhelming amount of cases that seat belts save lives. It seems reasonable to me that we ought to support this bill. I would agree with those who say that responsible adults shouldn't need to be told to do this, but the fact is that was pointed out by Senator McLane, I am going to have to pay the bill if they don't. I have a responsibility to tell them to wear their seat belt.

Amendment adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator Colantuono.

Paired votes: Senator Currier, Senator Delahunty.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Fraser, Roberge, Blaisdell, Baldizar, Pignatelli, McLane, Russman, Shaheen, Hollingworth, Cohen.

The following Senators voted No: Lovejoy, Disnard, Wheeler, Colantuono, Podles, Barnes, J. King, Bourque.

Yeas: 13 - Nays: 8

Adopted.

SB 194 is ordered to third reading.

SB 202, an act relative to special plates and windshield placards for persons with walking disabilities. Transportation committee. Ought to Pass with Amendment. Senator MacDonald for the committee.

1609B

Amendment to SB 202-FN

Amend RSA 261:88, III as inserted by section 1 of the bill by replacing it with the following:

III. An applicant for such special plates shall furnish the director with satisfactory proof, as the director may require that the applicant meets the requirements of paragraph II. Such proof must be submitted every 5 years. Satisfactory proof of a walking disability, at a minimum, shall consist of the certification of a licensed physician that the applicant meets the definition, set forth in paragraph I, of persons with walking disabilities. Upon request and for a fee of $1.50 per plate, the director shall exchange special plates for regular plates currently issued to an applicant who qualifies for special plates.

Amend RSA 261:88 as inserted by section 1 of the bill by replacing all after paragraph X with the following:

XI. In order to lawfully utilize parking spaces reserved for persons with walking disabilities, all persons or organizations holding special number plates, decals, cards or placards pursuant to RSA 261:88, as of January 1, 1994, and who have not submitted a doctor's certificate since January 1, 1992, must reapply using the procedure set forth in paragraphs II-VII. In the case of those persons or organizations who successfully reapply and who possess special number plates or placards as of January 1, 1994, the expiration date of such plates or placards shall be as was the case prior to January 1, 1994.

XII. The commissioner shall appoint an advisory committee to review complaints regarding such special plates or placards, to review applications for such plates or placards, to hear appeals of denials of such plates or placards, and to otherwise advise him on matters related to the administration of this section.

SENATOR MACDONALD: Mr. President, this bill was requested by the Department of Safety. It was a result of the Department of Safety working with a group of people to bring the current law up to standards so that we could use our plates or our cars in other states. Before you had different ways of doing it. Now what they are doing is that you can have a plate or you can have a hanging placard. But under this bill, you would be recognized anywhere in the country where right now you would have problems with some of the ways that we are doing it. This bill is just to bring us up to federal standards, to bring us into compliance with the federal law to use these plates. There is no intent to change the law. It is just to make it very simple to operate in any state that you want to go in.

Amendment adopted.

Ordered to third reading.

SB 211-FN-A, an act relative to ski craft and continually appropriating a special fund. Transportation committee. Inexpedient to Legislate. Senator Cohen for the committee.

SENATOR COHEN: The committee heard many hours of testimony with the majority of those testifying opposed to SB 211. The proposed legislation would have changed the definition of ski craft by limiting it to jet ski craft capable of carrying only one person. This would undo the compromise reached by competing interest in 1989 when it was agreed that there needed to be some control over both two place and single place jet ski craft, since there is little difference in the operation of either. Moreover it would open the door to contention in court that the limitations promulgated after hearings would no longer be effective since the definition of ski craft upon which over 100 hearings have been held was no longer effective. Testimony by the Director of Safety Services and the Department of Safety testified that the present law is working well and that the department opposes SB 211. The Supreme Court has recently ruled that the hearing process used by the Department of Safety is fair and valid. With only one-third of great ponds affected by ski craft restriction, there is ample opportunity for owners of these types of water crafts to enjoy the use of unrestricted great ponds and tidal waters. Regarding the establishment of a dedicated fund through increased ski craft registration fees, the Department of Safety told the committee that only $26,000 could be raised. That amount is insufficient to add and support one additional marine patrol officer. The amount required to allow the addition of such officers just to monitor the behavior of ski craft operators would be astronomical and impractical. In addition, I have received a number of letters on this, almost all on the same side. I just got one yesterday from someone in Jaffrey talking about their two large childrens' camps located on the shores of Thorndike Pond. There is also a well attended public beach and a swimming club, numerous canoes and little sailboats on the pond during summer days. Many of these are used by children who are learning to handle these vessels. Frequently, one sees older children and young adults swimming across the pond. The letter goes on, it is not our intention to spoil the fun. We feel that we must make all efforts to safeguard the rights of other members of the public so

that they may enjoy the water without feeling threatened by darting, weaving, reeling, zigzagging, bouncing, speeding crafts. We speak from experience. We believe that the welfare of all those citizens, young and old, which enjoy the water activities during our short summer season must be given serious consideration over those who wish to experience the euphoria of careening through public waters. The committee recommends inexpedient to legislate.

SUBSTITUTE MOTION

Senator Podles moved to substitute ought to pass for inexpedient to legislate.

Question is on the substitute motion of ought to pass.

SENATOR PODLES: The Personal Water Craft Association held a demonstration on Lake Winnipesaukee in July of 1992 which I attended. It gave me and the legislators and the guest an opportunity to view the ski crafts in operation and discuss the use of the ski crafts with individuals in the industry. Emphasis should be given to the differences between the single person crafts and the two and three person crafts. There is a marked difference; for example, a single person craft must be ridden from a standing position. It does not have the power to stay afloat and it tips very easily and it is much like a ski mobile that goes fast and is extremely noisy. But a two person and a three person craft are quieter and it doesn't jump out of the water as a single person craft does. It has a larger muffler and a better designed underwater exhaust system, it is much like a boat and can be used for fishing. It is a redesigned boat. It floats more or less and doesn't disturb the peace. I witnessed the boat in operation. They cause no greater air pollution, turbulence problem or wildlife degradation than any other power boats. Ski crafts that are operated safely and loftily have no negative impact upon the states' wildlife. The bill also, which is a very good feature, imposes a $20 registration fee for ski craft and the $20 is earmarked for additional marine patrol officers to patrol the state waterways to insure compliance with ski craft laws. Increased policing can ensure safe and enjoyable use of our waterways by all of the boats, both owners and operators. What it also does is that it establishes a ski craft patrol fund and then requires the safety services to distribute a copy of the current law to each of those operators of that craft in the state. So really this is a craft that is not going to disturb the peace. It is much like a boat. In fact some of those boats were used in Vermont during the flood to take people across the waters. It is something that people could enjoy on our lakes. A lot of them cannot afford a big boat and this is a very good kind of craft to have on the waterways to enjoy our beautiful lakes. I urge support for SB 211.

SENATOR BARNES: Senator Podles, can you water ski off of the back of one of these two or three seaters?

SENATOR PODLES: Yes, I think that you can, but I haven't seen water skis attached to the boat. That is something that I did not witness when I was there. But I am sure that can be done.

SENATOR BARNES: Thank you.

SENATOR MCLANE: I rise in strong opposition to the pending motion of ought to pass. I don't know who you would rather see on the back of a jet ski in a bathing suit, Senator Podles or myself, but I can say that neither one of us are authorities on the subject of jet skis. All that I know how to do is to imitate the horrible noise that they make. It comes from the

exhaust of the jet ski going over the waves. The only fun with a jet ski is to go round and round in circles. We have fought the jet ski battle for seven years in this legislature. We have a good law now. As Senator Cohen said, it has been approved by the Supreme Court, the public hearing process and there are two very important points about this bill. One, Senator Podles has seen a brand new two person jet ski which she claims is quiet and does not tip over. The present law covers all two man jet skis and that law would be negated if we pass this. It would mean that all the old jet skis that are two person jet skis, that are now licensed would then be allowed on all of the hundred lakes where we have had the hearings and where jet skis have been banned. The present law would not apply to them. There are far more two person jet skis than one person jet skis. It would utterly negate the over 100 hearings which we have had which have closed off those small lakes with high sides where the noise vibrates and reverberates, those small lakes with small islands in them where nesting birds have been disturbed by the jet skis. The jet skis can go on the big lakes, they can go in the middle of the medium sized lakes. The present law is working and I urge you to vote down ought to pass, which is a backdoor way of saying that all the present two men jet skis would then be allowed on those lakes where we have carefully closed them after hearing.

SENATOR PODLES: Senator McLane, would you believe that legislation does not change the law currently on the books regarding single person crafts? This legislation that we have here just updates our laws regarding personal watercraft based upon changes in the technology in the industry?

SENATOR MCLANE: If this bill applied only to brand new jet skis, it would be something else, but it doesn't. What it says is that two person jet skis which are now presently banned from over 100 small lakes would be allowed if the bill passes. That does not just say that the brand new, lovely, expensive, non tippable, two person jet skis would not be banned. It says that two person jet skis would not be banned.

SENATOR PODLES: Senator McLane, would you believe that that is your own interpretation?

SENATOR MCLANE: I believe that that is the interpretation of those that appeared at the hearing at the Lakes Association and with the Department of Safety.

SENATOR SHAHEEN: Senator McLane, now you and I agree on probably 98 out of 100 things, but this is one issue that we don't agree on. I have to correct a statement that you made because you said that, "jet skis disturb nesting birds." In fact I talked to Tom Belasterro who is a professor at UNH who studies water and he is incidentally, as well a resident of Madbury and a neighbor of mine, so I do trust his judgment. He has done a study of personal watercraft. I was asking him about the harmful effects on nesting birds and waterfowl and he cited to me a study that was done in Massachusetts several years ago, which said that, "in fact a fisherman fishing off of a bank has a more harmful impact on nesting birds than a jet ski because the way a jet ski is constructed it cannot go into areas where there are grasses and reeds growing up out of a pond, which is where birds nest, because those weeds would get tangled up in the intake valve and stop the boat from running. But in fact, if you are fishing off of a bank, you are there on an ongoing basis and you disturb nesting birds." So I think that one of the misconceptions about jet skis is that they do have a detrimental impact on the lakes and the environments

where they are operated. The fact is according to Mr. Belasterro, "they don't have anymore harmful impact than any other boats, and in fact, in most cases it is much less because the higher the horsepower of the boat the more harmful is the impact on the environment and jet skis have a relatively low horsepower."

Question is on the substitute motion of ought to pass.

Paired votes: Senator Currier, Senator Fraser.

A roll call was requested by Senator Podles.

Seconded by Senator Barnes.

The following Senators voted Yes: Lovejoy, Wheeler, Baldizar, Colantuono, Podles, J. King, Bourque, Shaheen, Delahunty, Hollingworth.

The following Senators voted No: Lamirande, W. King, MacDonald, Disnard, Roberge, Blaisdell, Pignatelli, McLane, Barnes, Russman, Cohen.

Yeas: 10 - Nays: 11

Motion of ought to pass fails.

Question is on the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 226-FN, an act relative to special number plates for reserve members. Transportation committee. Re-referred to committee. Senator MacDonald for the committee.

SENATOR MACDONALD: In the hearing we had strong evidence, testimony to have the plates, but we also had testimony that there are other bills coming from the House pertaining to the same type of numbers, different organizations. So what we would like to do is to see what we get from the House and try to work out one bill which would take care of everybody that would like these plates.

Committee report of re-referred to committee is adopted.

SB 244, an act increasing the penalties for persons convicted of negligent homicide, including mandatory license revocation. Transportation committee. Ought to Pass with Amendment. Senator MacDonald for the committee.

1604B

Amendment to SB 244

Amend RSA 630:3, III as inserted by section 2 of the bill by replacing it with the following:

III. [In addition to any other penalty imposed, if the death of another person resulted from the negligent driving of a motor vehicle, the court may revoke the license or driving privilege of the convicted person for up to 7 years.] ***Upon a conviction of a violation of RSA 630:3, I or II based upon operating a propelled vehicle, the court shall immediately revoke the license or driving privilege of the person so convicted to drive within the state for a period of not less than 3 years; and, in either situation, at the discretion of the court, such license revocation or driving privilege may be extended for a period not to exceed 10 years. No portion of the mandatory sentence of the period of revocation imposed under this section shall be suspended or reduced by the court, and the period of revocation imposed under this section shall not run during any time that the convicted person is incarcerated under this section.***

SENATOR MACDONALD: This was requested by the Highway Safety Department. It changes the violation to a misdemeanor, but one of the main features that I feel that is the main part of the bill, is that it makes it right now when you take a breathalyzer when somebody gets stopped for drinking, they use a breathalyzer, what they would like to do is to have a test where it would be a combination of liquor and controlled drugs. The way that things are going in this world, the Highway Safety feels that that is the future that you have to have a test that would take care of both problems. Right now, you can have a few drinks and have drugs. The other thing was, your license, if you go to jail your license revocation shouldn't start until you get out of the cell, that is the other part of the bill.

Amendment adopted.

Ordered to third reading.

SB 245, an act changing the penalties for driving while intoxicated or under the influence of drugs. Transportation committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: SB 245 was a request of the Highway Safety Department. It makes a person driving or attempting to drive a vehicle guilty of aggravated driving while intoxicated if he transports a person under the age of 16 while under the influence of the intoxicating liquor or a controlled drug or if such person has an alcohol concentration of .10 or more. The bill also increases the driving license revocation period for certain offenses. SB 245 will ensure that those who drive while intoxicated are held accountable for their actions. With this important reason in mind, the Transportation committee recommends that SB 245 ought to pass.

Adopted.

Ordered to third reading.

SB 246, an act making riding a bicycle while intoxicated a violation. Transportation committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, this bill should be taken very seriously. Actually, it comes from traffic safety. The reason is that there was a case and the person, yes, was riding the bike and they did get off because the law is not clear in that regard. Now, the police chiefs want this particular piece of legislation because what is happening is people who have lost their license for DWI, now chose to ride a bike. In riding a bike it becomes very difficult for the other people on the road in their vehicles, these people sometimes are weaving in and out or they are just not in control of the bike and they are causing responsible motorists to have difficulty and sometimes accidents. We don't feel that we should allow them to ride their bike when they have .10 anymore than we allow them to drive when they are .10. The committee voted ought to pass and I hope that the Senate will agree. Thank you.

SENATOR COLANTUONO: A person sitting at home watching the Super Bowl and imbibing and they run out of beer, but they are intoxicated and they need to run down to the local store. They go out in their garage and they see a car there and they know that it is against the law to drive while intoxicated, but they see their bicycle there and they know that right now it is not against the law to take their bicycle, so now they will

take their bicycle. But if we pass this and it is illegal to operate either one, won't that person say, 'oh what the heck', and just jump in their car to go down to buy that beer?

SENATOR ROBERGE: Frankly, wouldn't we be doing them a favor by saying that I have had enough, if I can't ride and I can't drive, I mean I ought to be at home? They probably ought to be in bed.

SENATOR BARNES: I would like to make a motion of inexpedient to legislate.

SENATOR HOUGH (In the Chair): That motion is of a lower motion and the motion is out of order.

SENATOR BARNES: Okay, how about a table job?

SENATOR HOUGH (In the Chair): The Chair will recognize Senator Barnes at the proper time. I have requests to speak to the motion in the committee report.

SENATOR LAMIRANDE: Basically I wanted to say the same thing as Senator Barnes, but I wanted to put it in a different way so that you wouldn't turn it down. I was going to state that I am in opposition to ought to pass and I would like to not make a motion now, but sort of get in there, inexpedient to legislate.

SENATOR BARNES: I move to make a substitute motion of inexpedient to legislate.

SENATOR HOUGH (In the Chair): The Chair again, would instruct the member that the motion of inexpedient is of lower motion and is out of order.

SENATOR BARNES: I am sorry. I meant to say that I would like to table this Senate Bill.

Senator Barnes moved to have SB 246, an act making riding a bicycle while intoxicated a violation, laid on the table.

Division requested.

Yeas: 16 - Nays: 5

Adopted.

LAID ON THE TABLE

SB 246, an act making riding a bicycle while intoxicated a violation.

SB 247, an act clarifying who is subject to refusal of consent provisions for DWI under the OHRV and boating laws and requiring blood alcohol testing in certain boating accidents. Transportation committee. Ought to Pass with Amendment. Senator Cohen for the committee.

1606B

Amendment to SB 247-FN

Amend the bill by replacing all after section 3 with the following:

4 Combination of Intoxicating Liquor and Controlled Drugs Added. Amend RSA 270:48-a, I to read as follows:

I. No person shall operate or attempt to operate a boat while under the influence of intoxicating liquor or a controlled drug ***or any combination of intoxicating liquor and a controlled drug.***

5 Effective Date. This act shall take effect 60 days after its passage.

SENATOR COHEN: This bill just makes current laws that apply for motor vehicles applicable to operators of off highway recreational vehicles

or boats subject to the same laws with regard to DWI. The amendment just adds the words, "or any combination of intoxicating liquor or a controlled drug." The committee . . . there was support from the Attorney General's Office, Traffic Safety and the Lakes Association all support this. There was no opposition and the committee suggests ought to pass.

Amendment adopted.

Ordered to third reading.

SCR 1, an act in support of an intercity passenger rail system. Ought to Pass with Amendment. Senator MacDonald for the committee.

1597B

Amendment to SCR 1

Amend the resolution by replacing all after the resolving clause with the following:

That the Senate and House of Representatives declare it to be the official policy of the legislature to support and encourage the reestablishment of intercity passenger rail service in the region, along the Boston to Portland railroad corridor, as warranted based on existing and projected need; and

That the Senate and House of Representatives declare it to be the official policy of the legislature to support and encourage the private sector development of a statewide bus service to include the Boston to Portland transit corridor.

AMENDED ANALYSIS

This concurrent resolution declares it to be the official policy of the legislature to support and encourage the reestablishment of intercity passenger rail service along the Boston to Portland railroad corridor, and to support and encourage private sector development of a statewide bus service to include the Boston to Portland transit corridor.

SENATOR MACDONALD: This is one of our toughest bills. Basically what we are talking about is going from Maine to Massachusetts and have them use the railroad down there in the Hampton area. But during the hearing we had strong testimony to include buses, so now we want to study trains and buses. The only one that was opposed was the Department of Transportation. Other than that, people would like to study the situation but include the buses along with the trains.

Amendment adopted.

Ordered to third reading.

SB 101-LOCAL, an act allowing local governments to share tax revenues arising from economic development. Ways and Means committee. Rereferred to committee. Senator J. King for the committee.

SENATOR J. KING: I rise in support of this bill. At the current time, they do share certain things between cities and towns and this would give them the authority to include, but not be limited to, the power to enter into agreements to share tax revenues resulting from local economic development efforts. The motion was to re-refer and I would like to change that motion to ought to pass so that Susan McLane can make a motion that it be sent on to the Senate Economic Development committee.

Committee report of re-referred to committee fails.

Recess.

Out of recess.

Senator McLane moved ought to pass.

Adopted.

Referred to the Economic Development committee (Rule #24).

SB 100, an act protecting organizations or projects involving animals. Wildlife & Recreation committee. Split Vote: Ought to Pass. Senator Disnard for the committee. Split Vote: Inexpedient to Legislate. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, this bill has to do with enhancing the penalty for damage done to an organization who is doing experiments with animals. There is already a law against burglary, arson, bombing, breaking and entering and assault. The intent of this bill is to send a stronger message than current law through enhanced penalties. Everyone that spoke said that there hadn't even been an instance of damage to an academic facility in New Hampshire. To my knowledge, we have never passed an enhanced penalty without a demonstrated need. One has to ask the question, what are these people doing in these laboratories that would cause them to be targeted for damage. I would say that if they are following humane rules of treatment for animals, they should have nothing to fear. I feel that passing this legislation will send the message, come to our state where we make it easier to experiment on animals. We want to know what they are going to be used for and evidently killed is what this bill is promoting as I do, you will be against this measure.

Recess.

Out of recess.

SENATOR ROBERGE: Members of the Senate, for those of you that were out of the room and I hope that my speech is not long. For those of you who have to listen to it twice, I hope that you will bear with me. This bill has to do with enhanced penalities for those who would damage buildings or projects involving animals that are used for experimentation and a couple of other areas that the bill addresses. My comments have to do with the fact that there is already a law against burglary, arson, bombing, breaking and entering and assault. The intent of this bill is send a stronger message than current law through enhanced penalities. Everyone who spoke said that there hadn't even been one instance of damage to any academic facility in New Hampshire. To my knowledge, we have never passed enhanced penalties without a demonstrated need. One has to ask the question, what are these people doing in these laboratories that would cause them to be targeted for damage? I would say that if they were following humane rules for treatment of animals, they should have nothing to fear. I feel that passing this legislation that we send a message, "come to our state where we will make it easier for you to experiment on animals because we will protect you." If you feel the acceleration of the often needless, repetitive experiments on animals, caged, waiting for the experiment that they will be used for and ultimately killed, is what this bill is promoting as I do. Please vote inexpedient to legislate.

SENATOR DISNARD: I rise in strong support for SB 100 introduced by our distinguished colleagues, Senator Hough, Senator Shaheen and Senator Barnes to protect agricultural and academic projects involving animals from the illegal acts of radical extremists in the animal rights movement. Our committee heard testimony from more than a dozen witnesses in support of this bill. But not one, not one single witness in opposition to it. The agricultural community, including Commissioner Steve Taylor and State Veterinarian Cliff McGinnis as well as representatives of the Farm Bureau, the State Fairs, owners of draft horses and other farm animals around the state strongly supported this bill. We also heard testimony from an Alan Hardy about an incident in 1991 at the Hopkinton State Fair which was targeted by a national extremists group. Mr. Hardy testified that animals were turned loose in their stalls and that several sheep were killed by cars on Route 103. Testimony by a representative from the Plymouth State Fair confirmed that all of the fairs have had to hire extra police and security to protect the safety of the farm animals as well as the public from such incidents. Senate Bill 100 will not interfere with the right to free speech and the legitimate activities of the animal rights supporters. Nothing in this bill will deny anyone his or her rights to picket or demonstrate. SB 100 however, will deter the radical elements of the animal rights movements from engaging in illegal acts in the state of New Hampshire. Since the 1980's illegal accidents and incidents around this country have included a fire bombing in St. Louis, Missouri in 1987 which caused more than $1 million in damage. Arson in 1989 in Sacramento California Live Stock Company, causing $250,000 in damage as well as numerous break-ins and vandalism and threats that the University Campus along the east coast in 1990 and 1991. Without a strong deterrent, New Hampshire could be targeted next by the radical groups. Plus, I strongly urge you to vote in favor of SB 100 to respond to the serious concerns in both the agricultural and academic community about the protection and safety of both animals and people from dangerous and illegal acts. I have here a compilation of only 107 instances, just a mere drop in the bucket of millions and hundreds of thousands of dollars of damages to campuses and other areas by groups in this country in which we are trying to protect New Hampshire from. Thank you very much.

SENATOR SHAHEEN: I rise in support of SB 100. This is a bill that is of a great concern to the University of New Hampshire. Partly because as you may remember in the Capital Budget two years ago, we voted $15 million to the university to build a new science center. Clearly some of the research that will go on in that science research center is research that would be covered under this bill. I certainly agree with Senator Roberge that to date there have been no acts of violence that would be covered under this bill. But the fact is, back in 1987 at the University of California, they were constructing a new building similar to the one that we will be constructing at UNH and it was damaged by arson by some extremists, who were animal rights extremists. And I think that none of us want a similar kind of incident to happen at UNH. The fact is that this bill isn't aimed at the humane community. In fact, before I signed onto this bill I talked to people who were involved in the humane societies in my district to see how they felt about it. They pointed out that they are not extremists. They wouldn't be affected by the bill. The fact is that there are some of those extremists out there and I think that we want to send a very strong message to them before the fact, not after something happens, that we will not allow that kind of behavior in the state of New Hampshire.

SENATOR BARNES: I would just like to make a comment. A lot of us sitting here in the chamber, such as Senator Roberge and myself, we care about animals. My five years up here in Concord, I have seen all sorts of animal bills come through, municipal and county government where I sat over in the House, they lined up at the door every year. I want to say that every time that we had an animal bill, folks from the Animal Rescue League and those types of organizations were always there to stand up for the animals of New Hampshire. As Senator Disnard spoke, he is on the committee that heard this bill. I sat there during the testimony and I did not see or hear or receive any letters at which I have in the past from any of the humane societies in the state of New Hampshire expressing a concern for this bill. So I, as an animal lover, feel very comfortable with this in that we are not going to be causing a problem to those folks like ourselves who feel very secure with our animal population.

SENATOR BLAISDELL: Mr. President and members of the Senate, I rise in strong support of the Disnard motion. There is no one, I don't think, in this room, except my wife, that thinks anymore about animals than we do. My wife and I have quite a few, so I want you to know that I am in strong support of this and I have no fear at all. Over 30 states, in fact, more than that I believe, have enacted this protection law and they certainly have brought down the incidents. I think that one thing that convinced me more than anything was a letter that I received from Senator Disnard's district, the Hubbard Farm, it used to be in my district until you people put me down in Holyoke Massachusetts, but I really . . . Hubbard Farms is probably one of those reputable concerns of the state of New Hampshire if not in the country. They had a concern and I really believe that if they didn't have a real sincere concern about this they wouldn't have written to us because they are a very reputable concern. I hope that you support the bill, I think that it is deeply needed.

Adopted

Recess.

Out of recess.

SENATOR LAMIRANDE: My question, Senator Shaheen, does this give carte blanche to anyone who is out there and wants to do anything to animals?

SENATOR SHAHEEN: No, no. What this does is that it addresses . . .

SENATOR LAMIRANDE: Are we going to create an animal holocaust here?

SENATOR SHAHEEN: No. Absolutely not. I think as I said, this is really aimed at extremists who would come in and willfully destroy or attempt to interrupt valid research that is going on. As Senator Disnard explained with this list of events that have occured throughout the country, it is really aimed at extremists acts, break ins, arsons, fire bombings against facilities, so it doesn't address . . . .

SENATOR LAMIRANDE: Has bombings, break ins and all of this actually happened?

SENATOR SHAHEEN: They certainly have happened throughout the country and there was an incident at the Hopkinton Fair that raised concern this year. That is why the feeling was if we are going to be building some new facilities, that are going to continue to be involved in research that it would be prudent for us to look at this kind of legislation. It is

also the result of some federal legislation that was passed in the last year that addresses research facilities. It specifically spells out what facilities are covered on the second page of the bill.

SENATOR COHEN: The purpose of the floor amendment, the wording in the amendment, the only change is, "whosoever without legal right interferes." It just adds those words, "without legal right." The purpose of that amendment is just to protect the civil liberties of anybody who wishes to state his or her concerns within their legal rights. So the only change is adding the words, "without legal right."

Senator Cohen offered a floor amendment.

1309B

Amendment to SB 100

Amend the title of the bill by replacing it with the following:

AN ACT
protecting animal facilities and organizations
or projects involving animals.

Amend the bill by replacing section 1 with the following:

1 New Section; Projects Involving Animals; Animal Facilities. Amend RSA 644 by inserting after section 8-d the following new section:

644:8-e Willful Interference with Organizations or Projects Involving Animals or with Animal Facilities.

I. Whoever, without legal right, willfully causes bodily injury or willfully interferes or attempts to interfere with any property, including animals or records, used by any organization or project involving animals, or with any animal facility shall be guilty of a class A misdemeanor.

II. Whoever in the course of a violation of paragraph I causes serious bodily injury to another individual or economic loss in excess of $10,000 shall be guilty of a class B felony.

III. For the purposes of this section:

(a) "An organization or project involving animals" means:

(1) A commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, education, or testing.

(2) Any lawful competitive animal event, including but not limited to conformation shows or obedience trials, field trials, agility events, hunts, sled races, or training activities.

(3) Any fair or similar event intended to advance the agricultural arts and sciences.

(b) "Animal facilities" means any vehicle, building, structure, research facility, or premises where an animal is kept, handled, housed, exhibited, bred or offered for sale.

(c) "Economic loss" means "economic loss" as defined in RSA 651:62, III.

AMENDED ANALYSIS

This bill prohibits willful interference with organizations or projects involving animals or with animal facilities.

Floor amendment adopted.

Ordered to third reading.

1618B

Enrolled Bill Amendment to HB 104-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

amending the way in which the towns of Londonderry and Sunapee shall collect their taxes for the fiscal years ending June 30, 1994 and December 31, 1993, respectively.

Amend the bill by replacing the section heading of section 2 with the following:

2 Sunapee Property Taxes.

Senator McLane moved adoption.

Adopted.

INTRODUCTION OF HOUSE BILLS

Senator Shaheen RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 105 - HCR 3 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading & Referral

HB 105-FN, removing the requirement that the state inspect meat by making the agriculture commissioner's authority in such matters discretionary. Public Affairs committee.

HB 106-FN, removing the requirement that the state vaccinate bovines against brucellosis. Wildlife and Recreation committee.

HB 109-FN, increasing certain fees and making technical corrections in the tobacco tax and timber tax. Ways and Means committee.

HB 112-FN, extending public assistance granted to needy and dependent children to otherwise eligible parents or needy caretaker relatives and changing a reference from human services to children and youth services. Public Institutions, Health & Human Services committee.

HB 230, creating a committee to study the allocation of interest resulting from pooled state funds. Banks committee.

HB 254-FN, relative to the authority of the state treasurer to void state checks and relative to increasing the fee for checks returned to the state. Ways and Means committee.

HB 298-LOCAL, authorizing bonding by the town of North Hampton. Executive Departments and Administration committee.

HB 255-A, relative to interest rates on short-term borrowing by the state treasurer. Banks committee.

HB 335, relative to listing the names of candidates on ballots used in voting machines. Public Affairs committee.

HB 336, relative to voter registration in cities. Public Affairs committee.

HB 402, encouraging the composting of food wastes and recycling of construction and demolition debris. Environment committee.

HB 528, relative to the payment of taxes by electronic funds transfer. Banks committee.

HB 621-FN-A, relative to the threshold for filing under the business profits tax. Ways and Means committee.

HJR 1, supporting the improvement of primary health care delivery. Public Institutions, Health & Human Services committee.

HB 111, repealing the pre-admission screening program for persons entering intermediate care or skilled nursing facilities. Public Institutions, Health & Human Services committee.

HB 114, relative to hunting restrictions. Wildlife & Recreation committee.

HB 120, mandating that workers' compensation benefits collected under New Hampshire law be the exclusive remedy for a person injured in New Hampshire. Insurance committee.

HB 122-FN, changing Central Street in the town of Newport to a class II highway. Transportation committee.

HB 124-A, repealing an appropriation for an environmental and engineering study and authorization to acquire rights-of-way for construction of a truck lane on U.S. Route 2 in Jefferson. Transportation committee.

HB 125-FN, relative to federal funding for rebuilding, modernizing, and maintaining rail properties. Transportation committee.

HB 132-Local, increasing the borrowing authority of the Bartlett water precinct. Public Affairs committee.

HB 202, allowing use of photographs on file for a duplicate driver's license. Transportation committee.

HB 353, relative to the police commission in the town of Conway. Public Affairs committee.

HB 498, relative to the committee reviewing the laws governing tax-exempt property and studying the concept of and criteria for payment in lieu of taxes by tax-exempt properties. Public Affairs committee.

HB 500, relative to the obligations of lessees of publicly owned property for the payment of property taxes. Public Affairs committee.

HB 126-FN, requiring the commissioner of transportation to establish an adopt-a-highway program. Transportation committee.

HB 169-LOCAL, allowing town and school district meetings to be held outside the town or school district. Executive Departments and Administration committee.

HB 176-FN, establishing a procedure to test and quarantine equines imported from CEM countries. Wildlife & Recreation committee.

HB 187-FN, authorizing the division of public health services to charge fees for copies of data or statistical information. Public Institutions, Health & Human Services committee.

HB 191, establishing a committee to study physician liability with regard to charitable medical care. Judiciary committee.

HB 194-FN-LOCAL, relative to rabies control. Wildlife & Recreation committee.

HB 208, relative to protecting personal privacy. Judiciary committee.

HB 216, allowing owners of homes destroyed by natural disaster to place temporary manufactured housing on the lot while the home is being rebuilt. Public Affairs committee.

HB 220, relative to the committee studying the real estate valuation and revaluation process. Ways & Means committee.

HB 227, relative to enforcement of parking violations. Judiciary committee.

HB 229-FN, relative to expenditures from the highway fund. Transportation committee.

HB 233, relative to the equipment challenge grant program. Education committee.

HB 241-FN, creating a committee to study the establishment of procedures for medical decision-making on behalf of patients unable to make decisions for themselves. Public Institutions, Health & Human Services committee.

HB 248, to allow municipalities to decide the number of members who serve on recreation or park commissions. Executive Departments and Administration committee.

HB 281, to change the Salisbury and Warner town lines. Public Affairs committee.

HB 287, relative to petition to the division of water resources by a municipality for dam disrepair. Environment committee.

HB 292, relative to a home care clients' bill of rights. Public Institutions, Health & Human Services committee.

HB 303, changing the manner in which a person accepts nomination for office by write-in vote. Executive Departments and Administration committee.

HB 318, changing the requirements for filing notices of intent to cut and reports of cut. Environment committee.

HB 359, making a technical change relative to class II highways. Transportation committee.

HB 373, relative to notification of employees of corrections facilities after exposure to infectious diseases. Public Institutions, Health & Human Services committee.

HB 378, relative to the selection of members of the wetlands board. Environment committee.

HB 406, establishing a committee to study pet overpopulation. Wildlife & Recreation committee.

HB 424-FN, permitting the state treasurer to pay the costs of bank services from income generated by the state treasury. Banks committee.

HB 499, changing a reference to a veterans organization and the qualifications for veterans' property tax credits. Executive Departments and Administration committee.

HB 508, permitting a dam to be constructed on Jenness pond in Northwood. Environment committee.

HCR 1, relative to a universal health care program in New Hampshire. Public Institutions, Health & Human Services committee.

HCR 3, encouraging the emphasis of United States military history into the school curriculum and directing that November 1993 be designated as "Armed Forces History Month." Education committee.

COMMITTEE REPORTS

SB 17-FN-A, an act establishing a committee to study methods of preventing and resolving disputes relative to educationally disabled students and making an appropriation therefor. Education committee. Ought to Pass with Amendment. Senator Podles for the Committee.

1646B

Amendment to SB 17-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT
establishing a committee to study methods of
preventing and resolving disputes relative
to educationally disabled students.

Amend section 1 of the bill by inserting after paragraph XIII the following new paragraph:

XIV. One representative of the Developmental Disabilities Council, appointed by the chairman of the council.

Amend section 3 of the bill by inserting after paragraph V the following and renumbering the original paragraph V to read as VI:

V. Applying for, receiving, and expending funds from other sources including state, federal, and private funding.

Amend section 6 of the bill by replacing it with the following:

6 Effective Date. This act shall take effect upon its passage.

Amend the bill by deleting sections 4 and 5 and renumbering section 6 to read as 4.

AMENDED ANALYSIS

This bill establishes a committee to study methods of preventing and resolving disputes in relation to educationally disabled students.

SENATOR PODLES: Mr. President, SB 17 establishes a committee to study methods of preventing and resolving disputes in relation to educationally disabled students. The appropriation is removed from this bill. The amendment adds one representative of the Developmental Disabilities Council and it is appointed by the chairman of the council. In section five of the bill, it also clarifies what is in the bill and it also changes the effective date upon passage. The committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 94, an act relative to workforce development. Education committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: This bill adopts a safe policy to insure optimal development of human resources required for a more productive labor force. This is not an education bill. The clerk indicated that before we could request vacating it to the Economic Development Committee since we had a hearing, we have to pass this bill before we recommend it to be vacated. I move ought to pass for the purpose of vacating this bill to the Economic Development committee.

Adopted.

Referred to the Economic Development committee (Rule #24).

SB 95, an act revising, conditioning, or repealing the rulemaking authority of the state board of education. Education committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: The first thing that I recommend is that we forget the analysis, it is incorrect, it is totally wrong and we do not know how it arrived there. What does this bill do? This bill was characterized by the Department of Education as a housekeeping measure and only in clarification, only a clarification of responsibilities will not result in any power changes. This distinguishes now in writing what is actually happening. Specifically the bill charges the commissioner with providing technical assistance and professional advice to the State Board of Education and overseeing administration of rules adopted by the board. It instructs the board to adopt rules, procedures, conduct public hearings and board meetings and a hearing and appeal process and consultation with the Commissioner of Education. It also requires the board to act through the commissioner and advise the commissioner regarding legislation. It does delete the board's authority relative to vocational technical colleges because they no longer have any statutory control over the technical colleges and institutes. It requires the board to evaluate annually the performance of the commissioner. It instructs the local school boards and the school administration units to comply with the rules of the state board. It changes from the state board to the department, the authority for employing consulting services and deletes other sections of RSA 186 relative to the duties and responsibilities of the board. Who supports the bill? The Commissioner of Education supported it, New Hampshire School Board Association. One person opposed the bill who is a Deerfield resident involved with education. Again, I wish to point out that it only distinguishes and clarifies what is occurring now. Nothing changes. There are no authority changes, it doesn't take anything or give anything to anybody or any board that they don't already do now.

SENATOR COLANTUONO: If this bill doesn't change anything, why are we passing it?

SENATOR DISNARD: It is the request of the State Board of Education, the State Department of Education to clarify in writing what has already now occured. Also to delete sections . . . the authority from the . . . college and institutes which they don't have any control over anyways.

SENATOR COLANTUONO: What does it mean when it says, "the Board of Education shall adopt rules in consultation with the Commissioner of Education?" Does that mean that the commissioner has to agree with the rule change or does that mean that the commissioner tells them what the rule changes will be?

SENATOR DISNARD: Consulting. Consulting to me, means giving information. If I hire you as an attorney for consulting, I expect you to give me good information, not to tell me what to do, but to give me some good information.

SENATOR COLANTUONO: Under this bill, if the board proposes a rule change that the commissioner doesn't agree to, is the board empowered to go forward with the rule change?

SENATOR DISNARD: My opinion under the present statute, yes.

SENATOR COLANTUONO: Under this law?

SENATOR DISNARD: The question is if the State Board . . . would you like to defer the question to the prime sponsor? I say, yes, you are right. But I would rather have the main sponsor give you the answer.

SENATOR COLANTUONO: The question was if the State Board of Education proposes a rulemaking change or new rules, that the commissioner disagrees with under this bill, do the rules go into effect?

SENATOR HOLLINGWORTH: They could still go into effect if they pass the rulemaking through the rulemaking process and even though the whole committee that sits on rules objected to it, they could still go forward. All that this does is to clear up what is happening now. But makes it clear, because there has been several times that there has been confusion. And as you know, last year, there weren't rules adopted or how the board should conduct its hearings and this seemed to be the way that they wanted to go to make sure that it was clear. The evidence was clear that this was supported by everybody.

SENATOR DISNARD: Under this all, what we did have here today, they changed things regarding commissioners and directors and boards. But under the question that you asked, presently, it does exactly what you say. The State Board sets the rules.

SENATOR COLANTUONO: On line nine, page two, "duties of the board." What are we changing when we say that the State Board shall act through the Commissioner of Education to do all of their duties?

SENATOR DISNARD: They are not changing anything. They instruct the commissioner what to do and he carries it out. Nothing has changed.

SENATOR COLANTUONO: The repeal provisions on page four, what are we repealing in the, relative to the powers of the state board under RSA 186-5?"

SENATOR DISNARD: I have to go back, but I am quite sure that it repeals their authority over the . . . I am guessing this now, I would have to go back, but I am quite sure that it repeals their authority over the state technical colleges and institutions. They are covered by new statutes, the commissioner and the board of directors.

Adopted.

Ordered to third reading.

Senators Colantuono, Podles and Wheeler in opposition to SB 95.

SB 176-FN-A-LOCAL, an act relative to kindergarten programs in local school districts and requiring an appropriation therefor. Education committee. Ought to Pass with Amendment. Senator McLane for the committee.

1649B

Amendment to SB 176-FN-A-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose; Promotion of Kindergarten Education. Research has shown that kindergarten is educationally sound and effective. Several long-term studies on the effects of preschool and kindergarten have shown the following outcomes for students who attended preschool or kindergarten: more students completed high school; better performance on achievement tests; higher IQ scores which lasted 3-4 years; better behavior in the classroom; more interest and curiosity; greater value placed on learning;

higher occupational aspirations and expectations; decreased number of retentions in grade; fewer placements in special education classes and institutional care; fewer arrests; and more were employed and supporting themselves by their own earnings. Kindergarten is an accepted part of public education in the United States. The New Hampshire general court is convinced that the time has come to provide incentives for all districts to initiate and maintain public kindergarten programs, thereby making an investment in high quality education and the future of the state and its communities.

2 New Subdivision; Kindergarten Incentive Program. Amend RSA 194 by inserting after section 194:59 the following new subdivision:

Kindergarten

194:60 Planning and Promotion Grants. The department of education shall partially underwrite the costs of planning and promotion projects which address the importance of a public kindergarten program for students in school districts which do not currently offer such a program. Planning grants shall be available to assist school districts in determining adequate classroom space and designing a program which will be appropriately equipped, taught by qualified staff, and meet the educational needs of students. Proposals shall also include a strategy for voter approval of a public kindergarten program. Promotion grants shall be available to assist school districts with the partial support of kindergarten programs during the first 2 years of their operation, and shall be used only for those costs directly related to the kindergarten program including instructor salary and benefits and short-term operating expenses. School districts shall be selected for planning and promotion grants based on criteria established by the state board of education.

194:61 Kindergarten Incentive Aid; Policy and Funding.

I. It is hereby declared to be the policy of the state of New Hampshire to share in the costs of kindergarten programs of the local school districts to the end that:

(a) The more needy school districts may be assisted in providing their students with this proven educational program.

(b) Education throughout New Hampshire may be improved.

(c) Incentives may be provided for the maintenance of kindergarten programs.

II. The state shall appropriate funds in each fiscal year to aid local school districts in meeting the costs of maintaining a kindergarten program. These funds shall be distributed based on criteria established by the legislature. Any local school district which provides a free public kindergarten shall be eligible to receive kindergarten incentive aid.

194:62 Rulemaking. The commissioner of education shall adopt rules, pursuant to RSA 541-A, relative to the procedures and guidelines necessary to implement the purposes of this subdivision.

3 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill provides that the state shall appropriate funds to assist local school districts in establishing and maintaining kindergarten programs by providing planning and promotion grants, and incentive aid.

SENATOR MCLANE: I am glad that Senator Lamirande is here because she can do this act better than I can. Both of us testified by pounding our fists on the table and saying, "New Hampshire is the only state in the Union that doesn't require kindergarten." I think that perhaps by reading the purpose of this bill, I could make it clearer. "Research has shown

that kindergarten is educationally sound and effective. Several long term studies on the effect of preschool and kindergarten have shown the following outcomes for students who have attended preschool or kindergarten. More students completing high school, better performance on achievement test, higher IQ scores that lasted three to four years, better behavior in the class room, more interest and curiosity, greater value placed on learning, higher educational occupation aspirations and expectations, decreased numbers of retentions in grade, fewer placements in special education classes and institutional care, fewer arrests and more were employed and supporting themselves by their earnings. Kindergarten is an accepted part of public education in the United States. The state board and department are convinced that the time has come to provide incentives to all districts to initiate and maintain public kindergarten, thereby making an investment in high quality education and the future of the state and its communities. This bill is a beginning on kindergarten." It doesn't ask for the entire $40 million that it would cost to mandate kindergartens, but it does provide planning and promotion grants and incentive aid. It is a beginning and we should do it.

SENATOR LAMIRANDE: I wish to rise in full support of Senator McLane's bill, SB 176 and make the statement that I feel that New Hampshire being the only state that doesn't mandate kindergarten is not something that we should be proud of. My purpose in life is to get that changed. Thank you.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 241-FN-A, an act increasing the cap on the continually-appropriated revolving fund for educational publications. Education committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: Placing a cap on education printed materials was set up in 1986 for $10,000. Presently the cap is still $10,000. It cost $9,000 to print these educational laws and directories are approximately $5,000. So for just those two you need about $14,000. This bill would make it so that it would go to $25,000 and anything over $25,000 would go into the general fund. No funds from the general funds are used in this, it is all from the sales of the books and its editorials and whatever it is that they print and then they sell them. I ask you to vote for SB 241. Thank you very much.

Adopted.

Ordered to third reading.

SB 130, an act requiring suspension or revocation of a physician's license for fraud. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1638B

Amendment to SB 130

Amend the title of the bill by replacing it with the following:

AN ACT

requiring disciplinary action against a physician for certain prohibited conduct.

Amend the bill by replacing section 2 with the following:

2 Fraud; Misrepresentation. Amend the introductory paragraph of RSA 329:17, VII to read as follows:

VII. The board [may], ***upon making an affirmative finding under paragraph VI, shall take*** disciplinary action in any one or more of the following ways:

AMENDED ANALYSIS

This bill requires the board of registration in medicine to take disciplinary action against a physician for certain prohibited conduct.

SENATOR COLANTUONO: The impetus of this bill was a case of a certain doctor who committed some real egregious acts and who did some serious damage to various parties in New Hampshire. The opinion of the sponsors was that the Physicians Licensing Board just wasn't strict enough in enforcing the laws so the amendment which appears on page eight of the calendar changes the law relative to discipline of doctors, which right now says that the board may exercise discipline if they find that there has been a violation of the rules and laws, to say that they shall exercise some form of discipline. It doesn't say what it is, it still leaves the discretion up to the board. But it says that in every instance where there is a finding that there has been a violation, the board shall exercise some form of discipline against that doctor. So with the amendment, the committee recommends ought to pass.

Amendment adopted.

Ordered to third reading.

SB 1, an act regulating the possession and sale of oleoresin capsicum self-protection products. Judiciary committee. Inexpedient to Legislate. Senator Cohen for the committee.

SENATOR COHEN: I am glad that you pronounced it, Gloria, rather than having me pronounce it. This bill was originally put in at a request of constituents in part of my towns. They since have discussed it with me further and they decided that they would like to withdraw the bill, thus the suggestion for inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 3, an act permitting law enforcement officers who are attorneys to appear in court for parties in civil proceedings. Judiciary committee. Inexpedient to Legislate. Senator Podles for the committee.

SENATOR PODLES: Mr. President and members of the Senate, SB 3 permits an officer who is an attorney and has a single practice to appear in a court of law that wants the police officer who are also attorneys to appear in court for TAPE INAUDIBLE someone in either criminal or civil proceedings; however, the bill fails to address how duel roles of an officer, attorney is to dovetail with professional conduct standards as an attorney and as a police officer. In other words, how can a police officer represent the interest of two masters. The committee had a problem with this and they recommend inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 61, an act relative to substitution of alternate jurors after final submission of a case to the jury. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1636B

Amendment to SB 61

Amend RSA 500-A:13, III as inserted by section 1 of this bill by replacing it with the following:

III. The alternate jurors shall be liable as regular jurors for failure to attend the trial or to obey any order or admonition of the court to the jury. They shall receive the same compensation as other jurors [and, except as provided in paragraph IV, shall be discharged upon final submission of the case to the jury]. ***At the final submission of the case to the jury, any remaining alternate jurors who have not been substituted*** under paragraph IV, shall be kept separate and apart from the other jurors in an appropriate place, subject to the same rules and orders as the jurors, until the jury has agreed upon a verdict or has been otherwise discharged.

Amend RSA 500-A:13, V as inserted by section 2 of the bill by replacing it with the following:

V. If, at any time after the final submission of the case to the jury, and before the jury has agreed on a verdict, a juror becomes incapacitated, is disqualified or dies, the presiding justice may order him to be discharged and direct the clerk to place the names of all of the remaining alternates in a box and draw the name of an alternate, who shall then take the place of the discharged juror on the jury. Before making a substitution, the presiding justice shall make a finding on record that the substitution will not cause prejudice to any party. The presiding justice shall instruct the jury to recommence deliberations and shall give the jury such other supplemental instructions as may be appropriate. The jury shall then renew its deliberations with the alternate juror.

SENATOR COLANTUONO: This case arose out of the very unfortunate situation in Nashua where a new trial had to be ordered because a juror during deliberations got access to some information that caused some prejudice and the juror was required to be substituted. There presently is no provision under the New Hampshire law to substitute an alternate juror. So thanks to Senator Pignatelli this bill was sponsored and placed before the committee. We made amendments that conformed to some of the good suggestions that we got from the Attorney General's Office and the New Hampshire Bar Association which are on page nine. With the amendments we would like to have the bill voted ought to pass and then following that, I understand that there is going to be a motion to table with the intent to send the bill to the Supreme Court for the ruling on the constitutionality. Right now it is not clear whether it is Constitutional to substitute a juror in this method.

Committee amendment adopted.

SENATOR COLANTUONO: Yes, on behalf of Senator Pignatelli, this floor amendment changes the effective date January 1, 1994 to 60 days after passage. The committee supports the passage.

Senator Pignatelli offered a floor amendment.

1622B

Amendment to SB 61

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect 60 days after its passage.

Floor amendment adopted.

Ordered to third reading.

RECONSIDERATION

Senator Colantuono moved reconsideration on SB 61 an act relative to substitution of alternate jurors after final submission of a case to the jury.

Adopted.

Senator Podles moved to have SB 61 an act relative to substitution of alternate jurors after final submission of a case to the jury, laid on the table.

Adopted.

LAID ON THE TABLE

SB 61, an act relative to substitution of alternate jurors after final submission of a case to the jury.

SB 67, an act relative to wage assignment for child support. Judiciary committee. Ought to Pass with Amendment. Senator Podles for the committee.

1644B

Amendment to SB 67

Amend RSA 458-B:2, III(d) as inserted by section 3 of the bill by replacing it with the following:

(d) In the case of orders not subject to immediate wage assignment under subparagraphs III(a), (b) and (c) of this section, wage assignment may be initiated upon a court finding that the obligor is in violation or contempt of an order of support or, after notice and an opportunity to contest pursuant to RSA 458-B:5 and RSA 458-B:7, when the state has commenced payment of public assistance for the benefit of the minor or children or when an arrearage amounting to the support owing for a one month period has accrued.

Amend the bill by replacing section 7 with the following:

7 Unemployment Compensation Benefits Subject To Withholding. Amend RSA 458-B:4, V to read as follows:

V. ***When child support is payable through the division and an obligor receives unemployment compensation benefits, the benefits payable to the obligor shall be subject to withholding by assignment.*** The amount withheld from [unemployment compensation] ***the*** benefits pursuant to RSA 282-A:159, II shall be 20 percent of the obligor's weekly benefit amount or [any benefits payable up to that amount] ***the amount of the order of child support, whichever is less.*** The obligor may voluntarily increase the withheld amount up to the full amount of his unemployment benefits. ***Notwithstanding the foregoing, a court issuing or modifying an order for support may order that more than 20 percent of the obligor's weekly benefit amount be withheld.***

Amend the introductory paragraph of RSA 458-B:5, I as inserted by section 9 of the bill by replacing it with the following:

I. When support is payable through the division if wages are not subject to immediate assignment under this chapter, including cases subject to a finding of good cause or to a written agreement, before notice of the wage [withholding] ***assignment*** may be given to [the] an employer ***by the division,*** the obligor shall be given at least 15 days' prior notice of the commencement of wage withholding procedures under this chapter. The notice to the obligor shall include:

SENATOR PODLES: Mr. President, SB 67 makes extensive changes to the existing wage assignments statute. What it does is that it clarifies existing laws and complies with federal regulation. It requires that all child support orders initiated after the effective date of this bill shall be paid via wage assignment with regard to arrears. Under current law, child support cases payable through the division are already paid by wage assignment without regard to arrears. This bill provides that all child support orders issued in the state shall be treated uniformly. The second major aspect of this bill is the good cause provision. Currently the court may order the child support shall not be payed via immediate wage assignment if it finds good cause not to order the assignment. This bill would require the court to make a finding on the record regarding the good cause exception and further defines good cause. The bill also addresses the assignment of unemployment compensation. The statute currently allows 20 percent of unemployment compensation to be attached to child support even though the order amount may be much greater. This bill authorizes the court to order assignment of an amount greater than 20 percent if it is warranted. The amendment on page nine in the calendar makes numerous references and corrections. It makes technical corrections and further clarifies language and the committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 91, an act limiting the liability of physicians who volunteer their services at athletic events. Judiciary committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to ask inexpedient to legislate on SB 91. Unfortunately, we found that this bill is not necessary. There is present law that will cover the doctors when they volunteer at sporting events; therefore, this is not necessary.

Committee report of inexpedient to legislate is adopted.

SB 111, an act relative to penalties for issuing bad checks and authorizing a pilot bad check restitution program. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1628B

Amendment to SB 111

Amend the bill by replacing section 6 with the following:

6 Applicability. For the purposes of establishing a bad check restitution program, the commissioner of Merrimack county may adopt rules and interview prospective personnel.

Amend paragraph III of section 7 of the bill by replacing it with the following:

III. Section 3 of this act shall take effect in Merrimack county January 1, 1994.

AMENDED ANALYSIS

This bill increases the penalty relative to issuing certain bad checks.

This bill repeals the special 6-month statute of limitations for prosecutions relative to issuing bad checks.

Merrimack county is authorized to establish a pilot bad check restitution program. A committee is established to study such program, and the bill authorizes other counties to establish such program at a later date.

SENATOR COLANTUONO: This bill was put forward as an initiative of the Retail Merchants Association. They continue to have a serious problem with bad checks in this state. The law that was passed several years ago to loosen up the penalty hasn't worked. This bill is designed to reinstate previous penalities. It is also designed to set up a pilot program in Merrimack County. The original bill included Belknap, but the amendment just says Merrimack which would allow a civil re-statute process through the County Attorney's Office to collect the money without giving the person a criminal record. The bill was heavily supported by the banking association and the merchants. There was no opposition and the committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 114, an act relative to minors' settlements. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1641B

Amendment to SB 114

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; "Net Amount" Defined. Amend RSA 464-A:2 by inserting after paragraph XIV the following new paragraph:

XIV-a. "Net amount" means the amount of settlement received after the deduction of attorneys fees, court costs, and other expenses related to the claim.

2 Amount Increased. Amend RSA 464-A:42 to read as follows:

464-A:42 Settlements on Behalf of Minors. No settlement, the ***net*** amount, ***as defined in RSA 464-A:2, XIV-a,*** of which exceeds [$5,000] ***$10,000,*** of any suit or claim brought on behalf of a minor by parent or next friend shall be valid unless approved by the court in which the action is pending or to which a writ may be made returnable. In any suit or claim on behalf of a minor or against a minor or in which a minor is interested, ***the net amount of*** which exceeds [$5,000] ***$10,000,*** the court shall require proof in the form of a certified statement from the probate court that the guardian ad litem, parent, next friend, or other person who receives money on behalf of the minor whether through settlement, judgment, decree or other order, has been appointed guardian of the estate of such minor and is subject to the duties prescribed under RSA 464-A:26.

3 Effective Date. This act shall take effect January 1, 1994.

SENATOR COLANTUONO: Last year in the court omnibus bill, we instituted a new procedure relative to the settlement on the behalf of minors which requires now that the persons taking the money on behalf of the minors namely, either the parents or the guardians, have to set up a guardianship at the probate court in addition to getting the Superior Courts approval of the settlement. That proved to be fairly burdensome for these small cases. The $5,000 limit has proven to be too low, so we are increasing it to $10,000 and making it clear that it is just the net amount of the settlement. If it is under $10,000 there doesn't have to be a guardianship set up.

Amendment adopted.

Ordered to third reading.

SB 115, an act relative to the expungement of certain records. Judiciary committee. Inexpedient to Legislate. Senator Colantuono for the committee.

SENATOR COLANTUONO: This bill relates to the expungement of arrest records. There is presently a law on the books that allows this to be done. I think that the bill was put in because some felt that that bill didn't go far enough. On the other hand, this bill in the opinion of many who testified, goes way too far. There was a lot of opposition to the bill and the committee felt that it did go too far and that is why we recommend inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 117, an act relative to the appointment of and payment of fees to guardians ad litem. Judiciary committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: SB 117 deals with a problem that has plagued the guardian ad litem program. The bill resulted from the study committee that worked hard all summer to address these problems. The bill sets up an Office of Guardian Ad Litem similar to the Office of Public Guardian. It sets up standards for all guardian ad litems to follow and allows the court to implement the rules of behavior for guardians and the disciplinary arm of the rules of conduct. The money for the bill will come from the various courts and the Division of Children and Youth who utilize guardians. It also sets up guidelines for guardians when the parents are indigent. There was unanimous support for the bill for all courts and the Division for Children and Youth.

Adopted.

Ordered to third reading.

SB 153, an act limiting the liability of companies and organizations that conduct not-for-profit guided tours for the purpose of promoting tourism in New Hampshire. Judiciary committee. Inexpedient to Legislate. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 153 limits liability for companies and organizations that conduct not-for-profit guided tours. The bill is too broad ranged and it doesn't have enough safeguards. There are no definitions and it had very little support. The committee recommends inexpedient to legislate.

SENATOR LAMIRANDE: I just want to point out that the bill was originally introduced at the request of our economic development person in the Berlin area. It doesn't do what the intent was and I am in agreement with the committees decision of inexpedient.

Committee report of inexpedient to legislate is adopted.

SB 174-FN, an act relative to county liability for payment when children are placed by a court order. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1637B

Amendment to SB 174-FN

Amend the title of the bill by replacing it with the following:

AN ACT
relative to the notice to counties when children
are placed by a court order.

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect 60 days after its passage.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to ask ought to pass with amendment on SB 174. This clarifies notification procedures for notifying the county when county liability for child placement cost. This amendment merely changes the text of the title of the act and the effective date. There was overwhelming testimony in support of this legislation.

Amendment adopted.

Ordered to third reading.

SB 219-FN-LOCAL, an act relative to the felony commitment procedure. Judiciary committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to ask inexpedient to legislate on SB 219. This bill has been before the legislative process over the last eight years and unfortunately, it has never been able to be resolved. It would ask to have treatment for retardation and there is no such process or treatment. We would ask you to support inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 221-FN, an act relative to grandparents' visitation rights. Judiciary committee. Majority Vote: Ought to Pass. Senator Podles for the committee. Minority Vote: Inexpedient to Legislate. Senator Colantuono for the committee.

SENATOR COLANTUONO: Up until very recently there was no common law or statutory right that grandparents could visit their grandchildren. It was a question left to the right of the parents to control the situation. The legislature in the recent past has decided that it is a good thing to allow a court to grant a grandparent visitation rights under certain limited circumstances. A few years ago that right was broadened through some legislation that was passed. A dispute arose among those who thought that grandparents shouldn't have the right to visit for some very good reasons. There was testimony concerning situations where grandparents might have been abusive to their children and there was fear that they would continue the abuse with their grandchildren and so forth. A careful balance was struck and a compromise was made in this legislature that was voted on by both the House and the Senate, which stated that grandparents can continue to try to seek visitation rights through the courts, but if they did, they had to pay all of the cost arising out of such actions. That bill in that form, passed the House and the Senate. This bill was brought in because it was felt by some that it was unfair to make grandparents pay all of the costs. During the hearing the committee heard from one grandparent who had to go through this process and was complaining about the fact that she had to pay the cost. But it turned out that person who testified was a person of low income who lived on a retirement income in a mobile home park. But, she did find the money. She loved her grandchildren enough that she was willing to make the sacrifice to get the money to pay the cost. On the contrary, we heard testimony and stories from a lot of parents who believed because of the problem that they had abusive parents, that they just didn't want their grandparents ever to have the right to see the children under certain circumstances. There was also the complaint among parents that

when they go through a divorce, it is among the time in their lives when they are the most impoverished because they have to split up. One household splits up into two. They have the cost of supporting two different households. They have to hire attorneys. They have to pay for attorneys. And usually by the end of a divorce, there is no money left even if there was some to start with, and now you have the grandparent coming along and hauling them into court and they have to go through the process all over again. A lot of the parents just can't afford it. Those are some of the reasons why the original compromise was struck. So speaking for the minority of the committee, I believe that the legislature spoke only several years ago. We had a hearing in which only one citizen came in to complain about it. I believe that we should let the current law work. It is only a very, very, limited circumstance when a grandparent would have to go to court anyways. Keep in mind that in a normal divorce situation where there is shared custody or even if one party doesn't have custody but they have visitation rights, that parties parents can see those children whenever that party can. So there is no need for a specially court ordered grandparents' visitation rights. That is the reason I am opposed to the bill.

SENATOR DISNARD: Senator Colantuono, I am amazed and surprised to hear you say that there was an agreement reached the last time that this bill was brought before the legislature that the grandparents agreed to pay their cost and the cost of the parents when they wanted to have visitation rights. They had to go through a court procedure to make sure that the grandparents were the type of grandparents that should see their grandchildren. I don't recall that compromise, were you there then, I must have missed that?

SENATOR COLANTUONO: No, Senator. I was told that a compromise was made among legislators to do it this way. I didn't mean to imply that grandparents were involved in the process of agreeing to this.

SENATOR DISNARD: I don't recall that at all, but I just wanted to bring that forward.

SENATOR COLANTUONO: Thank you.

SENATOR DISNARD: I think that it was an error, would you believe, the way that it was printed originally?

SENATOR COLANTUONO: No, I don't believe that. And I think that Senator Wheeler has some personal experience that he could relate to it.

SENATOR PODLES: Mr. President and Senators, prior to the enactment of the New Hampshire grandparents visitation rights statute in January of 1990 the New Hampshire Supreme Court decided two cases in which they granted grandparents the right to visit with their grandchildren on the common law principals of equity. One was in 1985 in the case of Roberts v. Ward and the second one was Preston v. Mercieri. So those were two and the courts stated that the relationships between children and their grandparents can be particularly special, close and rewarding. All of you who are grandparents, you know how special the day is when your grandchildren visit with you. Visits with grandparents are often a precious part of a childs experience and there are benefits which revolve upon the grandchild from the relationship with his grandparents which he cannot derive from any other relationship. HB 578 removes the provision requiring grandparents to pay all costs related to petitions for visitation rights. It deletes the entire paragraph which presently reads, "that the cost shall be paid by the petitioner." According to current law,

grandparents have to pay all the costs, all of the lawyers fees and all the guardian ad litem fees for both sides. The cost is the crux of their complaint. The law that was designed to help them, actually hurts them. As we legislators grant these rights, but we also put conditions on them, it discriminates against grandparents. Unfortunately, this law has discouraged many grandparents from petitioning for visitation rights. The general rule is that each side pays for their own attorney fees and this was the intent of the committee. We urge support for ought to pass.

SENATOR HOLLINGWORTH: I would just like to add a couple of comments if I could to Senator Podles, she did an excellent job but we did hear that this was the only area in which an individual had to pay to have the right to petition the court to have visitation rights. Senator Colantuono mentioned the fact that there could be, the grandparents could be abusive. But that is the decision for the court to make when they go before the courts, the court will determine the validity of whether or not that individual should have visitation rights or not. It is clear that this is a punitive measure to prevent some grandparents because of one of the spouses or the spouse may have some vendetta against them. So I think that this piece of legislation is a fair way to treat our grandparents.

Question is on the ought to pass motion.

Adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Russman.

Seconded by Senator Colantuono.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Fraser, Lovejoy, Disnard, Roberge, Blaisdell, Baldizar, Pignatelli, McLane, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Wheeler, Colantuono.

Yeas: 20 - Nays: 2

The motion to order to third reading is adopted.

SB 235-FN-LOCAL, an act relative to involuntary emergency admissions. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1653B

Amendment to SB 235-FN-LOCAL

Amend RSA 135-C:28, III as inserted by section 1 of the bill by replacing it with the following:

III. When a peace officer observes an act by a person which, in the judgment of the officer, may result from mental illness and may pose a likelihood of danger to the person or others as defined in RSA 135-C:27, the officer may take such person into protective custody and transport the person to an emergency room of a licensed general hospital for the purpose of determining if an involuntary emergency admission shall be ordered in accordance with RSA 135-C:28, I. The period of protective custody shall end if the physician determines that the person does not meet the criteria for involuntary emergency admission in RSA 135-C:27.

AMENDED ANALYSIS

This bill authorizes a peace officer who observes an act by a person which may be the result of mental illness and which may pose a likelihood of danger to the person or others to transport that person to a licensed hospital to determine whether such person should be involuntarily admitted into the state mental health system.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to ask for an ought to pass motion. I would like to defer to Senator Shaheen who was a sponsor of this excellent piece of legislation.

SENATOR SHAHEEN: I would like to refer everyone to page 12. What the amendment does is restate the original bill making some changes in language which is the result of concerns expressed by people at the hearing. What this bill does basically is to allow a police officer to intervene and take a person who is suspected of having a condition resulting from mental illness into protective custody. Currently police officers can do that if someone is intoxicated, if someone is in the middle of performing a criminal act. But if somebody is mentally confused or has some problem and is walking down the center of the highway, about to be hit by a car, under current law there is no way for police to take that person into protective custody. This bill allows them to do that. It allows them to take the person to a hospital for an examination and it expedites the ability to help people in that situation. I would urge the body to support the amendment.

Amendment adopted.

Ordered to third reading.

SB 41, an act permitting selectmen to accept dedicated streets which have been approved by the planning board. Public Affairs committee. Ought to Pass with Amendment. Senator Barnes for the committee.

1645B

Amendment to SB 41

Amend RSA 674:40-a, I as inserted by section 1 of the bill by replacing it with the following:

I. Notwithstanding RSA 674:40, a municipality with the town meeting form of government, which has conferred upon a planning board platting jurisdiction in accordance with RSA 674:35, may, by majority vote at an annual or special meeting, under an article in the warrant inserted by the local governing body, or by petition, delegate to the local governing body the authority to accept dedicated streets. Such a delegation may be rescinded by the municipality in the same manner.

SENATOR BARNES: SB 41 came to us recommended by the New Hampshire Municipal Association just to clear up some gray areas that have risen throughout our state and some of the towns that we have. Just a matter of making it straight that the selectmen do have this power to do it. I hope that you can all see your way clear to voting this in.

Amendment adopted.

Ordered to third reading.

SB 83, an act requiring towns to grant a $1,400 property tax credit to persons with certain disabilities or their surviving spouses. Public Affairs committee. Ought to Pass with Amendment. Senator Disnard for the committee.

1654B

Amendment to SB 83

Amend the title of the bill by replacing it with the following:

AN ACT
authorizing municipalities to adopt a property tax exemption for the totally and permanently disabled.

Amend the bill by replacing all after the enacting clause with the following:

1 New Sections; Exemption for Disabled. Amend RSA 72 by inserting after section 37-a the following new section:

72:37-b Exemption for the Disabled.

I. Upon its adoption by a city or town as provided in RSA 72:37-c, any person who is eligible under the federal Social Security Act for benefits to the totally and permanently disabled shall receive a yearly exemption in an amount to be chosen by the town or city.

II. The exemption in paragraph I may be applied only to property which is occupied as the principal place of abode by the disabled person. The exemption may be applied to any land or buildings appurtenant to the residence or to manufactured housing if that is the principal place of abode.

72:37-c Procedure for Adoption.

I. Any town or city may adopt the provisions of RSA 72:37-b for an optional disability exemption in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting under the procedures set out in RSA 39:3, and shall be voted on by ballot. In a city, the legislative body may consider and act upon the question in accordance with their normal procedures for passage of resolutions, ordinances, and other legislation. The legislative body of a city may vote to place the question on the official ballot for any regular municipal election, or in the alternative, shall place the question on the official ballot for any regular municipal election upon submission to the legislative body of a petition signed by 5 percent of the registered voters.

(b) The selectmen or city council shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(c) The wording of the question shall be: "Shall we adopt an exemption for the disabled? The exemption, based on assessed value, for qualified taxpayers shall be (here insert dollar amount). To qualify, the person must have been a New Hampshire resident for at least 5 years: own the real estate individually or jointly, or if the real estate is owned by a spouse, they must have been married for at least 5 years. In addition, the taxpayer must have a net income of not more than (here insert dollar amount) or, if married, a combined net income of not more than (here insert dollar amount); and own net assets not in excess of (here insert dollar amount) excluding the value of the person's residence."

II. If a majority of those voting on the question vote "Yes", the disability exemption shall apply within the town or city on the date set by the selectmen or the city council; provided, however, that upon adoption the exemption shall take effect no later than April 1 next following the referendum.

III. A municipality may change the amounts of the disability exemption in the manner described in paragraph I. The wording of the question shall be the same as set out in subparagraph I(c), except the word "adopt" shall be changed to "modify."

IV.(a) A town or city may consider rescinding its action in the manner described in paragraph I. The wording of the question shall be the same as set out in subparagraph I(c), except the word "adopt" shall be changed to "rescind."

(b) If a majority of those voting on the question vote "Yes", then as of the next April 1, following the action taken to rescind, the disability exemption shall not apply within the town or city.

2 Effective Date. This act shall take effect April 1, 1993.

AMENDED ANALYSIS

This bill authorizes a city or town to adopt a property tax exemption, in an amount to be chosen by the city or town, for the totally and permanently disabled.

SENATOR DISNARD: I am the prime sponsor and not a member of the committee; however, I totally support the bill. Presently in communities where you have a quadriplegic that was not as a result of war injuries, when a community, the legislative body, the city council, the selectmen, the voters, desire to give a tax abatement to that person, they can't do it because the law doesn't permit it. Over 200 people signed a petition to the city council in Claremont to assist an individual who cannot use any of his four limbs and he has many other problems. He was unable to receive an abatement on his taxes up to any amount because the law did not permit it. With the assistance of this policy committee and the New Hampshire Municipal Association, the amendment on page 13 was drawn up. What this bill now does is to authorize its enabling legislation, not shall. The other bill that was originally submitted was, shall "authorize a city or town to drop a property tax exemption in an amount chosen by the city." One good thing about this bill now is that it has a means test. Someone has to qualify in terms of income then the local community will decide what that means test is. So it is enabling. You will have to be of a certain income to receive it, that the community so decides, it is all controlled by the community.

SENATOR COLANTUONO: How much is the exemption, I can't find it?

SENATOR DISNARD: The original was $1,400 that I submitted. Now it is up to the community. It is enabling legislation.

SENATOR COLANTUONO: Does that mean that they could exempt the whole amount of the bill if they want?

SENATOR DISNARD: If I understand this amendment from the committee. We are talking about a means test. We are talking about the instance, well I am, $1,400 tax, it was $700. I wouldn't read too much into that because of the means test.

Amendment adopted.

Ordered to third reading.

SB 118 an act relative to voting on municipal and school district issues. Public Affairs committee. Ought to Pass with Amendment. Senator Roberge for the committee.

1647B

Amendment to SB 118

Amend RSA 39:3-e, III as inserted by section 1 of the bill by replacing it with the following:

III. If a budget voted on by official ballot pursuant to this section is rejected, the governing body shall prepare a revised budget. The governing body shall establish a date for the vote on the revised budget, and shall take appropriate steps to warn the vote. The date of the vote shall be at least 7 days following the public notice. The vote on the revised budget shall be by official ballot and shall take place in the same locations that the first vote was taken. The budget shall be established if a majority of all votes cast are in favor. If the revised budget is rejected, the governing body shall repeat the procedure in this paragraph until a budget is adopted. If the town or school district is not able to adopt a budget within 2 months after the opening of town meeting then the town or school district budget shall be the same as that filed the previous year.

SENATOR ROBERGE: Mr. President and members of the Senate, the committee felt extremely strong about this particular issue. It had to do with putting an insert into the property tax bill suggesting that some people . . . I would defer to Senator Lovejoy.

SENATOR LOVEJOY: SB 118 is such an important bill because it deals with the peoples right to vote. Their franchisement to vote. This bill allows towns and school districts to vote by referendum to use the official ballot on all questions before the voters. It calls for voting to take place at the regular polling place between 10 and 30 days after the town or school district meeting. Now we heard some serious and some jolting testimony in that committee hearing. I was really surprised at what I heard, because I had never thought that we were disenfranchising voters by requiring them to attend the meeting on a Saturday. We heard from people who belong to the Seventh Day Adventist Religion who observe their Sabbath between noon time on Friday and noon time on Saturday. They couldn't go or couldn't participate because it is against their religion to do that sort of thing, so they are disenfranchised. We heard about those involved in vacation tourist industry. We heard from a lady in Conway who said that some 60 percent of their voters are involved in the vacation tourist industry and the weekends are the time that they work and that they couldn't get away to attend town meeting, so they were then disenfranchised. We heard from elderly people who have trouble sitting that long in a chair, who have trouble getting to and from the voting places, the town meeting places. We heard from elderly people who were intimidated in being in that type of a crowd, so they were disenfranchised. They are disenfranchised from voting. We heard from couples with children, they couldn't both get away to attend the town meeting. If the father went, the mother stayed home with the child. If the mother went, the father stayed home, or they had to shell out for a babysitter. They are disenfranchised from voting. We heard from another person with a handicapped child. In that case, either one of them were having trouble getting out. Now in many cases, in fact in most cases, towns do not have the capacity to seat or to house the great number of people to accommodate the great number of voters who are entitled to vote on issues that they are facing if the turnout is in great numbers. They don't have the facility to do that, so when the hall is full, then those who are not in the hall are disenfranchised from the vote. This bill allows for the town meeting plat-

form. This doesn't destroy the town meeting process in fact, it encourages it and enhances the town meeting process by allowing the discussion and the debate on the issues. But then it provides for a paper vote or a ballot vote opportunity following the town discussion of the issues facing those voters. One must ask, and I had to ask myself, which is most important, the process, because that is the way that it is being done, or the franchisement to vote, which is most important? One must ask, is the system that we have better served by encouraging full participation in town votes or by discouraging voter turnouts? Now the New Hampshire Municipal Association testified at the hearing and they said that they could go along. They would discuss this change as long as the discussion was held in an open town meeting form. Then the ballot would follow. At the hearing, the bill was opposed by only the School Board Association and by the lobbyist of the NEA and this is surprising to me because we teach our children in our schools the importance of the franchise to vote. We teach our children in the schools the importance of getting out and voting. We teach our children in schools that this is their opportunity, their obligation and their right to vote. And we teach them that disenfranchisement is wrong. The effort to making voting easier in America is being championed by the new Democratic President of the United States. Here in New Hampshire we have the opportunity to join in that effort by giving back to thousands of New Hampshire voters, the right to vote on their local towns business. We certainly encourage you and we solicit your support of ballot voting at town meetings.

SENATOR FRASER: Senator, would you believe that I live in a town that is probably as far as income is concerned in the bottom half of New Hampshire, that I was a selectman in my town, the town of Pittsfield for six years and not one of those incidents that you have cited, ever came to my attention, having to do with disenfranchised, would you believe that?

SENATOR LOVEJOY: Yes, I would believe that, certainly. But would you believe, Senator, that at the hearing, we had thousands and thousands of voters who were represented by spokesmen for their communities who feel that there is a problem and they have asked the Senate through the committee and through this bill to help them solve the problem?

SENATOR FRASER: I would believe that.

SENATOR SHAHEEN: This is a question on the bill rather than on the amendment. On page three of the bill it talks about the process for what happens if the electorate votes down the budget in particular and how another budget has to be prepared and how there has to be another vote and it is a continuing process. The question that I have is did the committee take into consideration the additional cost to the communities that are going to be involved with preparing the budgets and with holding elections? And I guess, Senator Lovejoy, the most recent example that I would cite to you is one that I am sure that you are aware of in the town of Lebanon, Maine, where the electorate actually voted to eliminate the police department because of the cost of running the department. What they discovered is that it created a lot more problems than it solved when they did that. Have you talked about, number one, the cost involved and what happens if a municipality never approves a budget? Are we then requiring communities to take vote after vote after vote in order to come up with a budget?

SENATOR LOVEJOY: The amendment, Senator Shaheen, says that if a town or school district is not able to adopt a budget within two months after the opening of a town meeting, then the town and school district

budget shall be the same as that filed the previous year. So it answers that. And yes, we did ask those questions of the cost of this, and the answers that we received indicated that this might be a small price to pay for making voting available to all of the residents of a town. And yes, I am aware of the Lebanon, Maine situation, because I live within a stones throw of it. They not only voted to do that, but at the next election they reaffirmed that vote. As unusual as I thought that was, it was their right at the voting booth to provide that sort of a result to the election and they did that, and that was their franchise to do that.

SENATOR SHAHEEN: And they substantially adopted, re-adopted the police department in the budget?

SENATOR LOVEJOY: Yes, they did.

SENATOR COHEN: Senator Lovejoy, could you explain to me how the passage of this with the amendment would not make it less important to attend town meetings and would not de-emphasize and perhaps just make town meetings superficial?

SENATOR LOVEJOY: Well, I would be happy to express my opinion on that. I know with both you, Senator Cohen, and myself who come from cities that it is difficult to project ourselves in the town meeting situation. You are in New Castle, so you do go through that . . . I have always envied that process of open debate. The open debate is held not only in the confines of the hall that is holding the meeting, but it is held in the drugstore and the grocery store and the barber shop and the hardware store and on the street. This is where discussion takes place in a community. I believe that it would encourage a larger vote rather than discourage a vote.

SENATOR COHEN: Thank you.

SENATOR ROBERGE: Mr. President and members of the Senate, I do live in a town and we are going to have a very important vote on March 4 having to do with; will we appropriate funds for an architect about $69,000, to start the process for a new Bedford high school. I received a flyer in the mail and it said, "this is a very important vote, we want you to come, but we also want you to know that you are going to be there until the wee hours of the morning. So you better be prepared to be there for a long time, take some food and make yourselves comfortable for a very, very long meeting." I have been to very long meetings in the past where half of the congregation gets up and speaks one after the other and it goes on and on. Sure, I will go and stay there to the bitter end, but I would suggest to you that there are a lot of people who have to get up very early in the morning and they can't do that. There are also a lot of older people who don't like to drive in the dark and probably can't drive in the dark and probably shouldn't, because they are a hazard to themselves and everybody else when they get on the road after dark. I would suggest to you that they are disenfranchised. And even for a person like me, it is very, very difficult to stay at these very long meetings. So I would suggest that I would rather go to the town meeting and listen to the debate and then have all of one day to be able to go into my polling place and vote at my convenience. I think that most everybody at some point of a day, if they hold it for all day, can get there. But they are not going to stay half the night and the early hours of the morning to vote. Very frequently, and you know that a lot of the times that these meetings are skewed exactly that way for that reason. So this is why that we feel that this is important; We don't want to disenfranchise anybody.

Recess.

Out of recess.

Question is on the committee amendment.

Paired votes: Senator Currier, Senator Russman.

A roll call was requested by Senator Wheeler.

Seconded by Senator Colantuono.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Fraser, Lovejoy, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, McLane, Podles, Barnes, J. King, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No:.

Yeas: 21 - Nays: O

Committee amendment is adopted.

SENATOR ROBERGE: Mr. President and members of the Senate, the public hearing shall be heard on the business portion or the town or school district meetings no less than one week before and no more than 30 days before any town or school district meeting. This pertains to annual and special town or school district meetings. Warrant articles shall be placed on the official ballot for voting.

Senator Roberge offered a floor amendment.

1648B

Floor Amendment to SB 118

Amend RSA 39:3-e, I(a) and (b) as inserted by section 1 of the bill by replacing them with the following:

(a) Public hearings shall be held on the business portion of the town or school district meetings no less than one week before and no more than 30 days before any town or school district meetings. This pertains to annual and special town or school district meetings.

(b) Warrant articles shall be placed on the official ballot for voting.

AMENDED ANALYSIS

This bill allows towns and school districts to vote by referendum to use the official ballot on all questions before the voters. Voting shall take place at the regular polling place on a date other than the date set for the annual or special town or school district meeting.

Under current law, the official ballot is reserved for certain elections and other matters specifically authorized by law.

Floor amendment adopted.

Question is on ordering to third reading.

Paired votes: Senator Currier, Senator Russman.

A roll call was requested by Senator Colantuono.

Seconded by Senator Wheeler.

The following Senators voted Yes: Lovejoy, Disnard, Roberge, Wheeler, Colantuono, Podles, Barnes, Delahunty.

The following Senators voted No: Lamirande, W. King, MacDonald, Fraser, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

Yeas: 8 - Nays: 13

The motion of ordering to third reading fails.

Senator Blaisdell moved inexpedient to legislate.

Adopted.

SB 118 is inexpedient to legislate.

SB 214-FN-LOCAL, an act requiring municipalities to give notice to property taxpayers of their right to seek tax abatements, tax exemptions and other forms of tax relief; and relative to appraisals for property tax purposes and establishing a study committee on property valuation. Public Affairs committee. Re-referred to committee. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, this was a very interesting issue, the committee all agreed with the concept. It has to do with enclosing either a piece of paper or writing something on the property tax bill saying that you may be eligible for an abatement and either putting a telephone number there or actually citing different cases where they might be eligible for an abatement. Now this bill was heard yesterday morning, so the Municipal Association came in and they had several suggestions where we might be able to do a generic for every town, city in the state. They had a number of ideas and so the committee decided that the best thing . . . this was an example . . . but of course as you can see it is really kind of large and the committee felt that it needed quite a bit of refining and we ask your support of re-referring it to the committee. We will be happy to continue to work on it and we have support from both parties.

SENATOR MCLANE: Mr. President, this was a rather dramatic hearing with two people there who had had extremely unfortunate situations of losing their homes because the selectmen had not informed them of the elderly tax abatement. It is a very simple matter for the towns to put the law and the legal aid people passed out a very simple slip of paper in which the law concerning abatements was set forth and so that taxpayers who are having trouble paying their bills could have at least a telephone number to call where they could talk about the law having to do with liens on their properties or tax abatements. I was appalled that the Municipal Association would try and pull a specter of mandating on a simple piece of paper. It could go on the back of the bill, it could be inserted with the bill. It seemed so compelling that particularly elderly people who were in danger of losing their homes could at least be told where they could seek some form of relief. I am amazed that after listening to that testimony that the committee would not go forward with this very simple bill which merely says tell the poor citizen who can't pay his bill, where you could get some tax relief. When the law is there, if you are over 65, if you somehow can't pay your property tax, the town could take a lien on it. It seemed too pitiful, particularly in light of the man who came and got crying himself and there was barely a dry eye in the hearing room. Senator Lamirande and myself, both put in the bill separately. We discovered it and got together, and we put in the bill. If it is the price of a thin piece of paper, I think that the cities and towns could spring that amount to let people know what the present law is. It makes no changes in the law. All that it says, "taxpayers need to know where they can seek relief."

SENATOR LAMIRANDE: I rise in opposition to re-referral. I just want to explain my reason for opposition to re-referral. Actually, there were no people opposed to Senator McLane's bill as it stands. My reason is that what this will do is that it will push this back a year and there is a great possibility that now several more people will not be aware of what their rights are to seek abatements. And they will in fact, lose their homes. I know because there are six to seven people that have approached me on this. Senior citizens in the Berlin area who were not aware of this and they went for tax liens on their property. To me, it should be up to the municipalities. It was a consensus, I believe, of the group, and the committee that this is a good bill. As Senator McLane so aptly put it, "for one little piece of paper to throw this back another year is totally ridiculous."

SENATOR PODLES: Senator Lamirande, I am not sure, you are establishing under this bill a study committee on property evaluation and we already have a study committee on property evaluation which has been in operation for a whole year and it has an extension for another year. I am not sure whether we should have a duplication here, could you explain why this is in here?

SENATOR LAMIRANDE: That was in there basically because I have found out that in the past, that there have been appraisers who were not certified, licensed appraisers appraising property.

SENATOR PODLES: That was taken into consideration in this other study committee.

SENATOR LAMIRANDE: And the purpose of the study committee was to make sure that any licensed appraiser that was assigned by a selectman or a municipality was a certified licensed appraiser. Not just one of these windshield appraisers and that is what we have been seeing in the past.

SENATOR PODLES: I don't know, you might want to check with the chairman of that committee.

SENATOR BOURQUE: I felt that the committee was very sensitive to the fact that those concerns were there. Because you were right, there was not a dry eye in the house, including me. Our only concern is that when it comes to Manchester and being on a computer, that it would take some time and it was impossible to do two sides with the date. I am just relating what the tax collector said when he came to the committee. We think that it is a very important bill and we didn't want to lose it. We wanted to work on it for next year so that everyone could have a better understanding. You are right, everybody should have an opportunity to understand all of the tax exemptions, because it happens in Manchester all of the time. As an alderman, they call me all the time and I have to direct them and give them some advice of who to call. So I thought that the committee was very, very sensitive. We were looking at trying to help you out as much as possible so that everybody would be able to enjoy that luxury of knowing what is available or not. We were very sensitive, but we were trying to help you out more than not.

Committee report of re-referred fails.

MOTION TO RECOMMIT

Senator Roberge moved to recommit SB 214 to the Public Affairs committee.

Adopted.

SB 214, is recommitted to Public Affairs Committee.

SB 46, an act relative to involuntary transfer or discharge of patients in health care facilities. Public Institutions, Health & Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

1621B

Amendment to SB 46

Amend the bill by replacing all after the enacting clause with the following:

1 Reason for Transfer or Discharge Added. Amend RSA 151:26, III(b)(2) and (3) and III(c) to read as follows:

(2) If the transfer or discharge is mandated by the physical safety of other patients and employees, as documented in the clinical record; [or]

(3) If the transfer or discharge is agreed to by the patient or the patient's legal guardian, and notification is given to the next of kin and the person or agency responsible for the patient's placement, maintenance, and care in the facility[.]; or

(4) If the patient's health has improved sufficiently so the patient no longer needs the services provided by the facility.

(c) The basis for the transfer or discharge shall be documented in the patient's clinical record in those cases where the transfer or discharge:

(1) Is necessary because the patient's needs cannot be met in the facility.

(2) Is appropriate because the patient's health has improved sufficiently so the patient no longer needs the services provided by the facility.

(3) The safety of individuals in the facility would be endangered.

[(c)]***(d)*** Upon notice, a patient may petition the superior court to enjoin the facility's decision to transfer or discharge. This petition shall stay any transfer or discharge pending a decision.

2 Effective Date. This act shall take effect 60 days after its passage.

SENATOR MCLANE: This bill is at the request of the Division of Human Services. It adds a fourth reason for discharge which is if the transfer or discharge is because of the patients improved health. It is a necessary change in the law in order to comply with the federal law which adds up to quite a lot of money, plus the fact that it is a good reason to discharge someone.

Amendment adopted.

Ordered to third reading.

SB 65, an act requiring health care providers to disclose an ownership interest in any entity to which they refer patients. Public Institutions, Health & Human Services committee. Ought to Pass with Amendment. Senator Baldizar for the committee.

1620B

Amendment to SB 65

Amend RSA 125:25-c, V and VI as inserted by section 2 of the bill by replacing them with the following:

V. Disclosure of currently held ownership interests in such entities shall be reported on or before January 1, 1994. All ownership interests assumed after January 1, 1994, shall be reported to the division within 30 days after such acquisition.

VI. Health care practitioners shall report quarterly to the division the number of referrals made to entities in which they have an ownership interest. Such reports shall be due within 30 days after the end of each quarter effective January 1, 1994.

Amend the bill by replacing sections 3 and 4 with the following:

3 Report to the Legislature. All such ownership interests in and referrals to such entities by health care practitioners shall be reported by the division to the speaker of the house and senate president on or before April 1, 1995. The division shall also include in this report recommendations as to expanding, amending, or repealing the requirements of this act.

4 Effective Date. This act shall take effect July 1, 1993.

SENATOR BALDIZAR: Mr. President and members of the Senate, SB 65 requires that all health care providers to disclose to the Division of Public Health Services and to their patients, an ownership interest in any entity to which they refer patients. This bill is the result of the work of the committee which closely studied the issue. The committee found the existing system had great potential for abuse. Studies in other states have found the practice of the physicians self referral has resulted in the over utilization of services in increased health care cost. At a time when health care costs are skyrocketing and fewer and fewer of our citizens can afford adequate health insurance and primary care, it is incumbent upon us as legislators to protect the public from this potential for abuse. The committee urges you to pass SB 65. Thank you.

Amendment adopted.

Ordered to third reading.

SB 90, an act relative to child support enforcement and child support payments. Public Institutions, Health & Human Services committee. Re-referred to committee. Senator Wheeler for the committee.

SENATOR WHEELER: SB 90 expands a number of people who must make their child support payments through the Division of HHS. The committee unanimously would ask that you give us this bill back through the re-referring so that we can take a better look at it.

Committee report of re-referred is adopted.

SB 123, an act relative to protection from infection by the human immunodeficiency virus and the hepatitis B virus. Public Institutions, Health & Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

1630B

Amendment to SB 123

Amend RSA 141-F:2, II-a as inserted by section 2 of the bill by replacing it with the following:

II-a. "Communicable hepatitis B virus infection" means the presence of both hepatitis B surface antigen and hepatitis B e antigen in the blood.

Amend RSA 141-F:2, IV-a as inserted by section 3 of the bill by replacing it with the following:

IV-a. "Exposure prone invasive procedure" means any medical, surgical, or dental procedure during which a health care worker palpates a needle tip in a body cavity, or any procedure during which a health care worker's fingers and a needle or other sharp instrument or object are present in a poorly visualized or highly confined anatomic site.

Amend RSA 141-F:9-b, VI as inserted by section 5 of the bill by replacing it with the following:

VI. The expert review panel shall approve or deny an application, and may impose conditions limiting the type of exposure prone invasive procedures the health care worker may perform and the circumstances under which such procedures may be performed. The review panel may also impose conditions requiring notification of previous patients who may have experienced exposure prone invasive procedures in which the health care worker participated while serologic positive or infected with the hepatitis B virus, notification of prospective patients prior to undergoing exposure prone invasive procedures, and notification of past and future employers engaged in the provision of health care. The review panel shall require notification of current employers engaged in the provision of health care when any conditions are imposed.

SENATOR J. KING: This bill establishes a procedure in the event that a health care worker becomes infected with HIV or hepatitis B. When the infected health care worker submits a letter requesting to continue performing certain medical procedures, the Director of Public Health Service, convenes an expert review panel. The panel recommends licensing restrictions for the health care worker. This bill was requested by the Department of Health and Human Services. For each separate event, a new review panel was set up. The panels will also immediately notify the appropriate state licensee authority of its decision. I ask that you vote ought to pass. Thank you very much.

Amendment adopted.

Ordered to third reading.

SB 124, an act relative to the operations of state correctional facilities. Public Institutions, Health & Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

1617B

Amendment to SB 124

Amend the bill by inserting after paragraph V of section 3 of the bill the following new paragraph:

VI. Two members of the public, appointed by the governor.

SENATOR J. KING: SB 124 establishes a committee to study the operation of the state correctional facilities. The mission would be to study and evaluate tasks dealing with the personnel and the staffing pattern, prisoner classification, workloads of those dealing directly with the prisoners, middle management involvement and so forth. One other area was to determine whether the central office should be at the state prison. The hearing was attended by several of the correction offices, all in favor, and the commissioner had no problem with it.

Amendment adopted.

Ordered to third reading.

SB 146-FN-A, an act regarding the use of medicaid enhancement funds. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: Mr. President and members of the Senate, as most of you know, New Hampshire has received well over $300 million from medicaid enhancement funds. While the average state received $32 per capita, New Hampshire received $326 per capita. We received more than our fair share and this money has been very helpful. This hundreds of millions of dollars has gone into the general fund and has been used to balance the state budget. There is little doubt that the state needed the money. But at the state time, the state has cut medicaid and other programs administered by Health and Human Services. What we must not forget is that this money came from the medicaid program. A program intended to help our poorest and our most needy citizens. SB 146-FN-A says that if the state uses the medicaid enhancement funds to enlarge the general fund in the biennium ending June 30, 1985, there will be no reductions in Health and Human Service programs. In short, this bill says that New Hampshire remembers how we got the budgetary windfall and that a small portion will be used to ensure that our poorest and our most needy citizens will receive the services that they need. The committee hopes that you will look favorably on this legislation.

Adopted.

Ordered to third reading.

Senator Colantuono in opposition to SB 146.

SB 150-FN, an act relative to involuntary commitment and transfer to the secure psychiatric unit. Public Institutions, Health & Human Services committee. Inexpedient to Legislate. Senator J. King for the committee.

SENATOR J. KING: After hearing the bill we were informed that there were two other bills on the same subject matter, one in the Senate and one in the House; therefore, we decided inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

RECONSIDERATION

Senator Blaisdell moved reconsideration on SB 146-FN-A, an act regarding the use of medicaid enhancement funds.

Adopted.

Senator Blaisdell moved ought to pass.

Adopted.

Referred to the Division of Finance (Rule #24).

SB 172-FN, an act making structural changes within the department of corrections. Public Institutions, Health & Human Services committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: Actually this bill was recommended by the Division of Audits and it does not increase any positions, it changes them around a little bit. It changes the director of Adult Services to a director of Secure Operations. It moves the one position up one step and it changes the other one around, Wardens position to group M. The Commissioner himself was in favor of it. As I said, there are no changes in the number of positions. It is just the changes in the grade and the moving around of the positions.

Adopted.

Ordered to third reading.

SB 173, an act creating a correctional industries advisory board. Public Institutions, Health & Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

1588B

Amendment to SB 173

Amend RSA 622:28-b, II(a)(6) as inserted by section 1 of the bill by replacing it with the following:

(6) The commissioner of the department of postsecondary technical education.

SENATOR J. KING: The bill at the request of the Department of Corrections creates a congressional industries advisory board at the state prison. The LBA audit also recommended the advisory board. It will help them in planning their operation. Please vote ought to pass.

Amendment adopted.

Ordered to third reading.

SB 195-FN, an act relative to the division for children and youth services confidentiality statutes and providing parental access to records. Public Institutions, Health & Human Services committee. Inexpedient to Legislate. Senator Baldizar for the committee.

SENATOR BALDIZAR: Mr. President and members of the Senate, the committee decided to make SB 195 inexpedient with discussions with the sponsors. We have agreed to use SB 210 as a vehicle to address the concerns that the sponsor had. So we are just using another bill.

Committee report of inexpedient to legislate is adopted.

SB 207-FN, an act relative to work incentives for families receiving Aid to Families with Dependent Children. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: Mr. President and members of the Senate, SB 207 allow families with an income of less than 50 percent of the standard of need to remain eligible for medicaid coverage and a partial AFDC grant. For example, an AFDC recipient with two children will be able to earn approximately $350 per month at a part time job. Including the AFDC grant, the family income for the month will total $850. This additional income will enable AFDC recipients to better make ends meet. Currently, there are disincentives for AFDC recipients to work. Except for the first $50 any earned income results in a dollar for dollar reduction in the AFDC grant. Equally important in SB 207 is the provision to allow an AFDC recipient to retain medicaid coverage while working part time. Currently, most forfeit their medicaid if they join the working world, and virtually, no part-time employers offer health insurance. Enabling AFDC recipients to keep their medicaid coverage is essential if we are serious about helping them make the transition into the working world. The committee urges you to support this legislation to provide work incentives to AFDC recipients. Thank you.

Adopted.

Ordered to third reading.

SB 208-FN, an act expanding Medicaid coverage to 185 percent of the poverty level for pregnant women and children to age 18. Public Institutions, Health & Human Services committee. Inexpedient to Legislate. Senator McLane for the committee.

SENATOR MCLANE: Thank you very much I haven't gone crazy. What we have done is to put the essence of this bill in the next bill. So this bill is inexpedient and I will explain the next bill.

Committee report of inexpedient to legislate is adopted.

SB 209-FN-A, an act relative to the children's health plan and making an appropriation therefor. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

1652B

Amendment to SB 209-FN-A

Amend RSA 167:66, III as inserted by section 1 of the bill by replacing it with the following:

III. The purpose of this subdivision is to make a needed and strategic investment in this state's human resources to take advantage of federally created options for obtaining additional federal financial assistance by expanding medicaid eligibility for low income pregnant women and children. This subdivision also provides for improved outreach and enrollment of medicaid eligible pregnant women and children and improved coordination of medicaid services for pregnant women and children with other publicly-funded programs providing maternal and child health services.

Amend RSA 167:68, I as inserted by section 1 of the bill by replacing it with the following:

I. Establish categorically needy coverage groups under RSA 167:6, VII and the applicable federal law and which establish less restrictive income and resource methodologies under section 1902(r)(2) of Title XIX of the Social Security Act as necessary to provide medical assistance coverage to all pregnant women and children 0 to 9 years of age whose household income does not exceed 150 percent of the federal poverty income guidelines disregarding resources.

Amend the bill by replacing section 3 with the following:

3 Appropriation. The sum of $500,000 for the fiscal year ending June 30, 1993, and the sum of $500,000 for the fiscal year ending June 30, 1994, are hereby appropriated to the division of human services for the purposes of this act. Such funds shall be appropriated from the moneys lapsing to the general fund pursuant to RSA 167:64 or pursuant to any statutory or regulatory provision whereby medicaid enhancement taxes or disproportionate share payments are used to qualify the state for receipt of federal matching Medicaid payments. "Medicaid enhancement tax" as used above means any tax imposed by the state on any provider of health care services wherein a portion of the proceeds of the tax are used to qualify the state for receipt of Medicaid matching funds from the federal government. "Disproportionate share payment" as used above means payments made to hospitals as defined in the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, section 4703, as amended, and the New Hampshire state medicaid plan. The governor is authorized to draw his warrant for such sums from the appropriate funds.

AMENDED ANALYSIS

This bill is designed to take advantage of recently created options to obtain additional federal cost sharing through medicaid for health services to low-income pregnant women and children.

This bill also provides for improved coordination of medicaid services for pregnant women and children with other publicly-funded programs providing maternal and child health services.

The bill makes appropriations for fiscal years 1993 and 1994 for the purposes of the bill.

SENATOR MCLANE: The findings and purpose of SB 209 are so beautiful that the Governor might well have written them himself. It says, "the general court finds that at least 20,000 New Hampshire children lack health insurance. The lack of available comprehensive maternity and child health services imposes a great cost in both human and financial terms." It then goes on to talk about the investment of healthy beginnings for children, including early and comprehensive prenatal care and comprehensive primary and preventative child health and developmental services. How are we to know that the Governor was going to be so impressed that he would steal some of this for his budget. So what we have done is take what he called for in his budget, which is to go to 150 percent of poverty, up to age nine. We commend him for it and we know that he would be interested in the words at the beginning of this bill. I don't think that we are going to go down without a fight when we get over to the other side. We are going to try to move it up from 150 percent of poverty and we are going to try and get it up to 18 years of age. It is what every other state in New England does. We are the lowest in medicaid coverage. But in honor of the Governor's good faith effort to go half

way in the bill as it was printed, we have changed in an amendment so that it is 150 percent of poverty up to age nine and we commend the Governor for that. We have put into the bill the amount of money, $500,000 a year to be matched by the federal government. As many people have said, starting with Marion Wright Adlemen, "for every dollar that you put in, you save $10 before the child gets to first grade."

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 216-FN-LOCAL, an act relative to persons and estates chargeable for support. Public Institutions, Health & Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

1639B

Amendment to SB 216-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Recoverable Expenses. Amend RSA 126-A:46 to read as follows:

126-A:46 Persons Chargeable With Support of Patients or Residents of Public Institutions. Except as limited in RSA 126-A:52, II, expenses incurred in the institutions named in RSA 126-A:45 or at the direction of the commissioner of health and human services in any public or private institution or elsewhere [by anyone having a father, mother, son, daughter, husband or wife whose weekly income or other resources are more than sufficient to provide a reasonable subsistence compatible with decency and health, may be recovered in an action in the name of the state, from either a father, mother, son, daughter, husband or wife, who are declared jointly and severally liable for such expenses, unless otherwise ordered by the court]***, may be recovered in any action in the name of the state from the person, or the person's spouse, or, if a minor, the minor's father or mother, whose income or other resources are more than sufficient to provide a reasonable subsistence compatible with decency and health, and the spouse, father and mother are declared jointly and severally liable for such expenses, unless otherwise ordered by the court.***

2 Recoverable Expenses. Amend RSA 126-A:47 to read as follows:

126-A:47 Estates Chargeable for Support. Except as limited in RSA 126-A:49, expenses incurred ***by anyone*** in the institutions named in ***RSA 126-A:45,*** or, at the direction of the commissioner of health and human services, in any public or private institution, or elsewhere [by anyone having a father, mother, son, daughter, husband or wife whose estate is more than sufficient to pay priorities I, II, III, IV, and V of RSA 554:19, may be recovered in any action in the name of the state, from said estate, father, mother, son, daughter, husband or wife which are declared jointly and severally liable for such expenses, unless otherwise ordered by the court]***, may be recovered in any action in the name of the state from the estate of the person, or the person's spouse, or mother or father, whose estate is more than sufficient to pay priorities I, II, III, IV, and V of RSA 554:19. The spouse and the father and mother are declared jointly and severally liable for expenses, unless otherwise ordered by the court, except that recovery of expenses against a mother or father shall be limited to the expenses***

incurred before their child reached the age of majority, to the share the patient or resident is entitled to under the will or otherwise by law, and as provided for in RSA 126-A:51.

3 Persons Chargeable for Support. Amend RSA 126-A:52, II to read as follows:

II. After any person has been a resident or patient in any of the institutions named in RSA 126-A:45 for 10 years or has reached the age of majority, the liability of persons other than the patient or resident ***or such patient's or resident's spouse*** to provide payments to cover the expenses of care, treatment and maintenance shall cease, except for recoveries from the estates of such persons which shall be limited as provided in RSA 126-A:51, II. ***The liability of a spouse under RSA 126-A:46 shall cease after the person has been a patient or resident of any of the institutions named in RSA 126-A:45 for 10 years.*** The liability of the patient or resident under RSA 126-A:52, II shall continue unless it is determined by the office of reimbursements, in consultation with the director of mental health and developmental services or the commissioner of health and human services, that the patient or resident lacks sufficient income from any source including, but not limited to, social security, retirement, civil service or veterans administration income, trust fund or other income to pay a full rate or a higher partial rate.

4 Effective Date. This act shall take effect January 1, 1994.

SENATOR J. KING: This bill is relative for persons and their estates chargeable for support at the state hospital and other institutions under the Health and Human Services. Most people, I believe, think that services provided at the state hospital are free to the extent that all costs are included in the budget for that institution. That is not so for some mothers, fathers, husbands, wives, brothers, and/or sisters and it might even get into the inlaws or those who have received services in these institutions. All or part of the obligations for the cost can be charged to them via support of placing a lien on the estate. That is not so for the penal institutions, you can go there free. The bill together with amendments, now removes children from financial responsibility for a resident at these institutions. Parents are only responsible until their child reaches his 18th birthday and if the patient or resident is married, only the spouse is responsible. The current law states that parents, children and spouses are jointly liable unless the person has been a resident or a patient for 10 years at the institution. The other amendment change in there is that the patient now, himself, can be if he has an estate, charged for his stay there. I move it ought to pass.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

Recess.

Out of recess.

TAKEN OFF THE TABLE

Senator W. King move to have SB 82 an act returning certain state-owned land to the town of Belmont, taken off the table.

Adopted.

SB 82, an act returning certain state-owned land to the town of Belmont. Interstate Cooperation committee. Re-refer to committee.

Motion of re-refer to committee fails.

Senator W. King offered a floor amendment.

1666B

Floor Amendment to SB 82

Amend the bill by replacing section 1 with the following:

1 Return of Certain Lands to the Town of Belmont. All lands acquired by the state by eminent domain, along the shore of Lake Winnisquam in the town of Belmont, for future highway construction or for general public benefit of scenic or recreational purposes under 1988, 243:1 shall be returned to the town of Belmont if the department of transportation does not choose to construct a bypass on such property within 2 years of the effective date of this act.

AMENDED ANALYSIS

This bill returns certain lands, acquired by the state by eminent domain, along the shore of Lake Winnisquam to the town of Belmont if the department of transportation does not choose to construct a bypass on the property within the next 2 years.

SENATOR BARNES: Senator King, on this amendment, when is the effective date, I don't see an effective date on there?

SENATOR W. KING: The effective date is on the bill itself and I don't have that in front of me. It was the same effective date as the bill which was 60 days after passage.

SENATOR BARNES: Okay, we are talking two years here?

SENATOR W. KING: Right. So what we are saying is that 60 days after passage there is a two-year period for them to make a decision about where the bypass is going to be. If the bypass isn't in this area, the land reverts back to Belmont.

SENATOR BARNES: Minor point, that doesn't have to be on the amendment?

SENATOR W. KING: No.

SENATOR BARNES: Okay. Thank you.

SENATOR COLANTUONO: Does this mean that if land is acquired by the state for private parties along the shore, the amendment TAPE INAUDIBLE.

SENATOR W. KING: No, the land has already been acquired. It was acquired 20 years ago. It has been idle since then as they have tried to work this out. The report is due out this November, I believe, so even if they are delayed a year, the land would just revert back to the town in two years.

SENATOR FRASER: Senator King, I just wanted to be sure, you say if the Department of Transportation does not choose to construct, in other words, if as you know, I am on the Routes 3 & 11 highway improvement.

As long as it is designated to be part of that project, this bill will not kick in. Is that a fair statement?

SENATOR W. KING: If the land in question is used for the bypass, then clearly it doesn't go back to the town. If it is not used for the bypass it reverts back to the town.

SENATOR FRASER: Okay. Just to be sure, the word, "chose", as long as it is in the plan. It is my understanding from what you are saying, that as long as it is in the plan, then this amendment would not kick in?

SENATOR W. KING: Well my assumption is if . . . my answer to that is that if it is not used for a bypass, this amendment would kick in. If it is used for a bypass, this amendment would not kick in.

Floor amendment adopted.

Ordered to third reading.

TAKEN OFF OF THE TABLE

Senator Hollingworth moved to have SB 127 an act requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency taken off the table.

Adopted.

SB 127, an act requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency. Environment committee. Ought to Pass with Amendment.

SENATOR HOLLINGWORTH: I will try to be very brief. I know that you are all tired and that you all have a place to go, but this bill, I think, is an important piece of legislation. It is like apple pie and motherhood and it is very important to your constituents. This bill as amended, could I ask that you listen to me because this is really kind of complicated and I know that you all want to talk, but if I could possibly have your attention for a minute. Thank you, I am sorry. This bill would say, that NU, if they applied for anymore Pollution Control Bonds, tax free from the BFA, that they would in fact turn around and give a portion of that savings back to the ratepayers to the state of New Hampshire. Currently there is another utility that receives BFA bonds. I would like to tell you a tale of two utilities and the difference. The other utility is Granite State, and some of you are familiar with that. That utility services about 34,000 customers compared to 374,000 - ten percent more than Granite State. Granite State got a loan of $22 million from the BFA, and what did they do with their savings of $1 million? They gave 50 percent of it back to the ratepayers. Now NU got bonds of $75 million just a few months ago and they received a benefit of $22 million. What did they give back to their ratepayers? Zero. This bill would stop that practice. Is it necessary to have it? I would like to say, yes, in fact it does, because I would like to give you, from the minutes of the BFA, and this was just prior to the approval of the $75 million. And PSNH Director Smith asked if PSNH had any intent of returning the $825,000 annual savings to the ratepay-

ers of New Hampshire, and Mr. Echart stated, "that there is no mechanism in PSNH's rate agreement for the state to return the benefits directly". This so angered the BFA that they sent a resolution to the PUC. And the resolution says in part, and I am not going to read the whole thing to you, "that they feel that they notified the PUC, "that the BFA approved that the tax exempt finances of $75 million to the BFA to pollution control revenue bonds and that those bonds", and I am paraphrasing what they say, 'that the BFA recommends that Public Service Company of New Hampshire described its efforts in economic development, energy conservation and rate containment in the state in addressing the short and long terms energy needs of the state". Did they do it? No. At the hearing when Arnold came in and spoke, and he said, "he wanted to," support the concept in the intergrade resource planning given all due emphasis on the demand side aspect in addition to the supply side". Now why do we need this piece of legislation? Obviously, NU thinks that it is important to have demands side management. The Public Utilities thinks that it is important to have it. What happened in Connecticut? What does NU do for their consumers in Connecticut? They give $60 million, $60 million. Do you know what they gave New Hampshire in energy conservation? In three years they gave $440,000 in conservation. Now tell me, if we have the per customer, we did the numbers . . . how much they think of conservation in Connecticut, that would have been $15 million back to New Hampshire for conservation. But, NU because they don't have too, because we allow them to take all of the savings and give it to the stockholders, out-of-state utility, New Hampshire's tax free pollution control bonds, we allow them to take all of those savings and to give it to their stockholders. Now I have worked on this bill with the utility. I tried very hard to get them to come to agreements, because I think that this is an important piece of legislation. This is what Michael Holmes said from the Office of Consumer Advocates in testimony to the bill, he welcomed the opportunity to support the bill, "I have watched over the last eight years, hundreds of millions of dollars of pollution control bonds being used for all kinds of purposes under the sun rather than for pollution control". I think that what this does is it really carries out the purpose of those financial vehicles. This tax exempt financial vehicle in that I can't imagine a more effective way to fight pollution than energy conservation and efficiency. I think that this is just an excellent way for the legislature to say to the utilities that there is a purpose behind the financial vehicle. It is clear that we are going to have to address certain air pollution standards the federal government is imposing on us. It seems that I hear all of the time that it is going to be on my car. Many of you in the Nashua area know what that means and many of us in the Portsmouth area know what that means. Here is a vehicle to do something about it. I think that it is an important policy statement and it can be made in reason that tax exempt exists. He also made a statement in the recent Portsmouth Herald, I am going to have these passed out. Those are from an article from the Boston Globe. There have been many articles about the lack of NU's ability to do what they are told by the rate agreement of giving some money to the ratepayers in the state of New Hampshire. What Michael Holmes said in a recent article is, "that it was unacceptable and asked that his office will pursue the matter and make sure that the will of the legislature is expressed and the rate agreement." As you can tell, I think that this is an important piece of legislation. I would ask ought to pass.

I want to hit home one more thing on this. That not only did Granite State give 50 percent back into the rate base to lower the rates, but it also gave $3 million into energy conservation, where PSNH gave $450,000 in three years. While in Connecticut they gave $60 million. I just want to make you aware that while they care very little bit about New Hampshire, this is the only mechanism that we have that we can say to them, "Okay, guys, if you want our money, you have to give us something back, it is only fair".

Committee amendment adopted.

Ordered to third reading.

TAKEN OFF OF THE TABLE

Senator Roberge moved to have SB 165-FN an act relative to certification of landscape architects, taken off the table.

Division vote requested.

Yeas: 15 - Nays: 7

Adopted

SB 165-FN, is taken off the table.

SB 165-FN, an act relative to certification of landscape architects. Executive Departments & Administration committee.

SUBSTITUTE MOTION

Senator Lamirande moved to substitute re-refer to committee for ought to pass.

SENATOR LAMIRANDE: SB 165 is too exclusionary, that is why I move re-refer. Thank you.

Adopted.

Senator Roberge requested a roll call.

Recess.

Out of recess.

Senator Roberge withdrew her request for a roll call.

Question is on the substitute motion of re-refer.

SUSPENSION OF THE RULES

Senator Bourque moved to suspend the rules to allow SB 165-FN, an act relative to certification of landscape architects from the Executive Departments & Administration committee to the committee on Wildlife & Recreation. The bill to be re-referred to the Wildlife & Recreation committee instead of Executive Departments and Administration committee.

Adopted by the necessary 2/3 vote.

Adopted.

SB 165-FN is referred to the committee on Wildlife & Recreation.

RESOLUTION

Senator Russman moved that all Senate Bills having no fiscal impact and all Senate Bills without an exemption from the Presiding Officer or sent to the Supreme Court, that are still in committee or laid on the table shall by this Resolution be made inexpedient to legislate.

Adopted.

BILLS KILLED BY RESOLUTION

SB 66, an act prohibiting the distribution of all forms of birth control to minors in public schools without parental consent.

SB 110, an act establishing the crime of stalking.

SB 246, an act making riding a bicycle while intoxicated a violation.

SCR 2, an act relative to the James Bay II project of Hydro-Quebec.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following House and Senate Bills:

HB 234, relative to the Winnisquam Regional cooperative school district and the Tilton and Northfield Union school district.

Senator Currier moved adoption.

Adopted.

RESOLUTION

Senator Russman moved that we adopt the Senate dates for deadlines setting forth the various session days and days for the deadlines and bills to the Governor's desk.

SENATOR HOLLINGWORTH: I am really concerned, because you have caught us at what has been a very difficult period. I have seen secretaries on the verge of tears and I, myself, have been there a few times in the last few days because of the deadline that we have been keeping. With that fresh in my mind I have a real problem to look at this proposal without examining it and being sure that we aren't going to find ourselves in the exact same position in a few weeks that we were in the last session. I am nervous about that and I don't know how many other people feel the way that I do, but I would wonder if this needs to be acted upon now? If there is an absolute reason why we have to adopt these deadlines at this moment or if we can not look at it in detail and determine whether this is going to create a burden for us that its going to cause us not to conduct democratic government. I saw bills that were made inexpedient, bills that had value, but there was no time to act on them. I feel that that is not in the best interest of what we are here to do, the government of our citizens.

SENATOR RUSSMAN: Well in defense of the dates listed, as you can see the dates that are set forth on here, the first ones have actually already come and gone and today is the eighteenth. The winter break is scheduled and the first date for hearings in March. The last day, we have already agreed upon for the procedure to exempt certain bills to March 4. Then we have our first session day. Then we just have session days listed. We need a deadline for the money bills and a deadline for the House bills of April 22. It is clear that in the event that we get down to that time, obviously, constitutionally, we have to be out of here by the July 1, 1993 deadline and some would like to be out of here sooner. Surely if it comes down to

it and we see ourselves getting in the same bind that we have found ourselves at this time, I would expect that the body would want to extend those dates and there is really no reason why they couldn't if the majority so chooses to do. But, at the same time we need something to shoot for here, and have something down on paper so that we have some sense of when we are going to keep this thing rolling and what we are looking for in terms of dates to finish up.

SENATOR MCLANE: Mr. President, isn't it true that in the last few weeks that you have made several adjustments in the dates. And isn't it possible for the presiding officer if he finds someone in tears to make a change which would be more amenable? And wouldn't it be better if we just adopted these deadlines and then left it to your good judgment, which I feel that you have shown in the last couple of weeks?

SENATOR HOUGH (In the Chair): If that is a question of the Chair, I would respond by saying that I am sensitive to the remarks of Senator Hollingworth and I will in fact take them under advisement. The date that we are really talking about is March 4. Between this time and March 4 we will be able to see what the position is in terms of the work load in the possession of the staff. As we move to March 4 we will have a better idea of our ability to dispose of the 38 bills that have been exempt at the conclusion of the day, certainly we can further amend the dates. We can recess to accommodate the known specific needs as of that time. Certainly I have no intention on the one hand of denying a member an opportunity to do the good work that the membership has done today; however, I do feel that it behooves us because remember the preceeding date of March 2 will be the beginning of House Bill hearings and there numbers are coming at us in ever increasing numbers. Fourth, can expand to the end of the session. I would be very willing to take under advisement the concerns when we get to the fourth of March. I would like to see what has been accomplished to date.

Adopted.

ANNOUNCEMENTS

SENATOR W. KING: (Rule #44): I only need a moment. I just wanted to say something in relation to what Senator Hollingworth said about the NU bill and so that everybody knows that Northeast Utilities, Public Service Company of New Hampshire did indeed this week make a presentation to the Business Finance Authority about what their plans were, so I don't want to leave you with the impression even though I voted with Senator Hollingworth, that they are not doing anything. They are indeed making an effort now to try and do something because of the pressure that was brought to bear not only by Senator Hollingworth but by the Business Finance Authority as well.

RESOLUTION

Senator Delahunty moved that the Rules of the Senate be so far suspended to allow all bills to be put on third reading and final passage at the present time, that all titles be the same as adopted and that they be passed at the present time and that when we recess, we will be in recess until March 4, 1993 at 1:00 p.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 6, permitting the bank commissioner to regulate municipal development authorities and organizations and not-for-profit development organizations which become small business lenders through certain federal and state loan programs.

SB 17-FN-A, establishing a committee to study methods of preventing and resolving disputes relative to educationally disabled students.

SB 41, an act permitting selectmen to accept dedicated streets which have been approved by the planning board.

SB 46, an act relative to involuntary transfer or discharge of patients in health care facilities.

SB 52, relative to workers' compensation liability insurance and return of insurance premiums.

SB 56, an act relative to coverage for intra-family or inter-spousal claims under liability insurance policies.

SB 57, an act relative to accreditation under the insurance laws.

SB 65, an act requiring health care providers to disclose an ownership interest in any entity to which they refer patients.

SB 67, an act relative to wage assignment for child support.

SB 82, an act returning certain state-owned land to the town of Belmont.

SB 83, authorizing municipalities to adopt a property tax exemption for the totally and permanently disabled.

SB 84, an act relative to the disposition of land use fees by municipalities.

SB 95, an act revising, conditioning, or repealing the rulemaking authority of the state board of education.

SB 96, an act making the State Credit Union Act conform with the Federal Credit Union Act.

SB 97, an act establishing a committee to study parking at Hampton beach state park.

SB 100, protecting animal facilities and organizations or projects involving animals.

SB 105, an act relative to the rulemaking authority of commissioners of state departments.

SB 107, an act excluding services performed by real estate appraisers from the definition of "employment" for purposes of the unemployment compensation law.

SB 108, an act relative to uninsured and underinsured motorist coverage.

SB 109, an act relative to automobile liability insurance and tort liability for certain motor vehicle operations.

SB 111, an act relative to penalties for issuing bad checks and authorizing a pilot bad check restitution program.

SB 114, an act relative to minors' settlements.

SB 117, an act relative to the appointment of and payment of fees to guardians ad litem.

SB 121, nullifying the law which amends RSA 457:29 relative to marriage license fees effective July 1, 1994, and raising the fee for marriage licenses.

SB 122, an act entitling Persian Gulf War veterans to the standard $50 veterans' tax credit.

SB 123, an act relative to protection from infection by the human immunodeficiency virus and the hepatitis B virus.

SB 124, an act relative to the operations of state correctional facilities.

SB 127, an act requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency.

SB 130, requiring disciplinary action against a physician for certain prohibited conduct.

SB 160, an act relative to qualifications for unemployment benefits.

SB 168-FN, an act relative to oil terminal facility registration and small fuel oil facilities.

SB 172-FN, an act making structural changes within the department of corrections.

SB 173, an act creating a correctional industries advisory board.

SB 174-FN, relative to the notice to counties when children are placed by a court order.

SB 180-FN-LOCAL, an act increasing the fee charged by the state on returned checks and making technical changes relating to enrollment and administrative provisions.

SB 183-FN-LOCAL, an act requiring the tax collector to notify certain mortgagees prior to execution of a tax deed.

SB 185-FN, an act allowing the director of the division of human services to reorganize the rules of the medical assistance program.

SB 187-FN, an act relative to public utility ratemaking.

SB 193, relative to liability under the hazardous waste, oil spillage and underground storage facilities laws and amending statutory definitions to clarify the secured creditor exemption.

SB 194-FN, an act relative to seatbelt legislation.

SB 202, an act relative to special plates and windshield placards for persons with walking disabilities.

SB 207-FN, an act relative to work incentives for families receiving Aid to Families with Dependent Children.

SB 221-FN, an act relative to grandparents' visitation rights.

SB 227-FN, establishing a revenue-neutral initial public offering exemption for national securities markets and clarifying which securities markets do not qualify for an exemption.

SB 229-FN-LOCAL, an act relative to the requirements for sprinkler systems.

SB 230-FN, relative to sprinkler systems in residential care homes and supported residential care facilities.

SB 235-FN-LOCAL, an act relative to involuntary emergency admissions.

SB 239-FN-LOCAL, an act relative to the public utilities commission.

SB 240, an act relative to the workers' compensation appeals board.

SB 241-FN-A, an act increasing the cap on the continually-appropriated revolving fund for educational publications.

SB 244, an act increasing the penalties for persons convicted of negligent homicide, including mandatory license revocation.

SB 245, an act changing the penalties for driving while intoxicated or under the influence of drugs.

SB 247, an act clarifying who is subject to refusal of consent provisions for DWI under the OHRV and boating laws and requiring blood alcohol testing in certain boating accidents.

SCR 1, an act in support of an itercity passenger rail system.

HCR 10, encouraging Congress to examine federal banking laws and regulations to determine which laws and regulations are overly restrictive and burdensome to banks and to repeal those laws and regulations.

Senator Delahunty moved that the Senate be in recess until March 4, 1993 at 1:00 p.m. for the sole purpose of introducing legislation, referring bills to committee, and scheduling hearings.

Adopted.

Recess.

SENATE RULE DEADLINES
1992-1993 SESSION

February 11, 16, 17, 18	Session Days for Senate Bills
February 18, 1993	Last Day for Policy Committee to Report non-money bills or bills without exemption
February 22 - March 1, 1993	Winter Break
March 2, 1993	First hearings on House Bills
March 4, 1993	Last Day for Policy Comm. to report Senate Bills that were exempted from 2/18 deadline
March 11, 1993	First Session Day for House Bills
March 17, 23, 24, 25,	Session Days for House Bills
April 1, 8, 15, 20, 22, 27, 29	Session Days for House Bills
April 15, 1993	Deadline for Money Bills in Senate
April 22, 1993	Deadline for House Bills in Senate
May 21, 1993	Deadline for appointing Comm. of Conf.
May 27, June 1, 2, 3,	Session Days for Committee of Conference Reports
June 9, 1993	Deadline for all bills to reach Governors Desk

Out of Recess.

RESOLUTION

Senator Disnard moved that the business of the day being completed, the Senate now adjourn until Thursday, March 4, at 1:00 p.m.

Adopted.

Adjournment.

March 4, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

A politicians' prayer: Good God, for better or worse, here I am. Keep me free today from narrowness, pettiness, and especially from an overblown sense of my own importance. As I deal with the issues and causes of the day, may my opinions be strong enough that I do not quiver like jello, but pliable enough that I do not snap off like a dried branch in a breeze. Please protect those who have elected me, for nobody is perfect - me or them.

Amen

Senator MacDonald led the Pledge of Allegiance.

INTRODUCTION OF HOUSE BILL

Senator J. King offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 101 - HCR 9 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 101, categorizing motor vehicle child passenger restraints by age. Transportation committee.

HB 102, changing the penalty for DWI and boating while intoxicated while transporting a person under the age of 16. Judiciary committee.

HB 113, expanding the financial authority of towns. Executive Departments & Administration committee.

HB 117, limiting the possessing or taking of marine mammals and prohibiting the taking of a fin fish or crustacean with mobile gear and salmon and striped bass with any netting. Wildlife & Recreation committee.

HB 118, repealing the prohibition against fishing on a certain portion of the Winnicut River. Wildlife & Recreation committee.

HB 128-FN, relative to the penalty for falsifying applications and to the fee for picture identification cards. Judiciary committee.

HB 131, repealing a penalty provision regarding anabolic steroids. Judiciary committee.

HB 135-FN, exempting certain properties from the long-range planning process prior to the sale of the property by the division of human services. Public Institutions, Health & Human Services committee.

HB 136-FN-LOCAL, pertaining to the authority and operation of the public utilities commission. Executive Departments & Administration committee.

HB 138, relative to revocation of hunting and fishing privileges and repealing statutory provisions relative to a guide's license to take bear. Wildlife & Recreation committee.

HB 142, relative to motorcycle noise levels. Transportation committee.

HB 153, prohibiting the buying and selling of bear. Wildlife & Recreation committee.

HB 182-FN, requiring the members of executive branch boards and commissions to file financial disclosure statements. Executive Departments & Administration committee.

HB 183-FN, relative to eligibility for parole. Judiciary committee.

HB 199-FN, requiring municipalities to use state police forms for license applications and licenses to carry pistols and revolvers. Public Affairs committee.

HB 221-FN, modifying the fish and game department's eminent domain powers. Wildlife & Recreation committee.

HB 223, changing the bureau of off highway recreational vehicles to the bureau of trails and expanding the bureau's duties. Executive Departments & Administration committee.

HB 224-FN-LOCAL, relative to the organization, accountability and liability of municipal fire departments. Public Affairs committee.

HB 238, authorizing a member of a cooperative school district to serve on a town budget committee. Public Affairs committee.

HB 243, establishing a committee to study local planning needs and mandates, and investigating various options available to fund planning services at the local level. Economic Development committee.

HB 244, relative to parking violation enforcement. Transportation committee.

HB 252-FN-LOCAL, allowing the wetlands board to adopt rules to expedite the permitting process for minimum impact projects. Environment committee.

HB 275, allowing towns to create special funds for highway expenditures. Public Affairs committee.

HB 277-LOCAL, extending the powers of heritage commissions to historic district commissions. Executive Departments & Administration committee.

HB 293, relative to notice to tenants prior to the sale of a manufactured housing park. Public Affairs committee.

HB 313, relative to mortgage insurance. Banks committee.

HB 324, relative to conditional discharge of a patient under the mental health laws. Public Institutions, Health & Human Services committee.

HB 330, relative to the authority of municipalities to designate certain roads as class V highways. Transportation committee.

HB 339, relative to reporting requirements for elected officials and candidates. Executive Departments & Administration committee.

HB 342-LOCAL, relative to the use of revenue derived from parking meters for public transportation systems. Transportation committee.

HB 354, relative to electing planning board members in towns without a town council form of government. Public Affairs committee.

HB 363, exempting certain nonresidents who are peace officers or hold valid licenses to carry loaded pistols and revolvers from obtaining such license in this state. Judiciary committee.

HB 381, prohibiting a person from working at a polling place as an election officer if a member of the officer's immediate family is on the ballot. Executive Departments & Administration committee.

HB 386, establishing a committee to study the district court system. Judiciary committee.

HB 405, relative to financing of manufactured housing. Banks committee.

HB 428-FN-LOCAL, authorizing the county convention for Rockingham county to employ a delegation coordinator. Executive Departments & Administration committee.

HB 447-A, to acquire land at Odiorne Point and making an appropriation therefor. Capital Budget committee.

HB 448, to define total expenditures made during a state primary campaign. Executive Departments & Administration committee.

HB 460, allowing the court to order offenders to pay restitution to the victims' assistance fund. Judiciary committee.

HB 473-FN, exempting certain charitable organizations from certain charitable trust filing fees. Judiciary committee.

HB 475, relative to special permits for the use of crossbows by physically disabled persons. Wildlife & Recreation committee.

HB 490, permitting a registered voter who is registered as undeclared to vote in a primary election and on the day of the primary election register again as undeclared. Executive Departments & Administration committee.

HB 493, revising the laws that require a prescription to purchase a hypodermic needle. Judiciary committee.

HB 504, relative to organ transplants. Public Institutions, Health & Human Services committee.

HB 514, amending the election laws relative to the political calendar and election ballots and the registration and reporting requirements for candidates and political committees. Executive Departments & Administration committee.

HB 521, relative to maternity benefits. Insurance committee.

HB 531, prohibiting persons from running as candidates on more than one party ticket in state primary and general elections. Executive Departments & Administration committee.

HB 541, relative to the reporting procedures required for disclosure of contributions for candidates and political committees in state elections. Executive Departments & Administration committee.

HB 548, providing staggered terms for county commissioners in Carroll county. Executive Departments & Administration committee.

HB 596-FN, to provide rulemaking notice to municipalities and legislators. Executive Departments & Administration committee.

HB 598-FN, authorizing the medical examiner to release corneas in certain cases for use in corneal transplants. Public Institutions, Health & Human Services committee.

HB 606-FN, authorizing employers subject to the workers' compensation law to establish managed care programs. Insurance Committee

HB 609, designating segments of the Ashuelot River for the rivers management program. Environment committee.

HCR 9, relative to population policy and environmental preservation. Environment committee.

INTRODUCTION OF GUESTS

COMMITTEE REPORTS

SB 98, an act relative to fees charged for processing and approval of residential mortgage loan applications. Banks committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1765B

Amendment to SB 98

Amend the bill by replacing section 1 with the following:

1 New Section; Residential Mortgage Loan Application Process. Amend RSA 384 by inserting after section 16-e the following new section:

384:16-f Residential Mortgage Loan Application Process.

I. If, following a public hearing, the commissioner determines that a bank, person or entity which is in the business of, or customarily makes or brokers residential mortgage loans, has consistently and without sufficient concern for the interests of applicants for such mortgage loans, ordered real estate appraisals, title searches or other third party services for which the applicant must pay, without prior determination of the applicant's ability to qualify under underwriting guidelines then applicable for the loan amount requested, or without obtaining the applicant's express permission to proceed without such prior determination, the commissioner shall order such bank, person or entity to conform to the procedures set forth in paragraphs II and III for such period as the commissioner deems appropriate to predictably address such concerns regarding applicants.

II. Prior to contracting for, or otherwise obtaining, a real estate appraisal, title search, or other third party service in connection with a residential mortgage application, the bank, person, or entity operating under a commissioner's order pursuant to paragraph I, shall first determine if the applicant possesses sufficient income, credit and employment to meet underwriting guidelines existing at the time such application is made, to qualify for the loan amount requested in the application.

III. If the bank, person or entity determines that a residential mortgage loan applicant does not possess sufficient income, credit and employment to qualify for the requested loan amount under existing underwriting guidelines, it shall then obtain written authorization of the applicant prior to expending any additional amount of the applicant's funds for further third party services. Before obtaining such authorization it shall provide the applicant with a written disclosure describing the circumstances and procedures under which a refund of any or all fees of the applicant may be obtained.

AMENDED ANALYSIS

This bill directs the bank commissioner, after a public hearing and under certain circumstances, to order a bank or residential mortgage lender to follow certain procedures with regard to expenditures for third party services relating to mortgage loan applications.

SENATOR FRASER: Mr. President, the amendment is on page five of the calendar today. What the bill does, Mr. President, is that it provides the banking commissioner with enabling legislation in the area of deposits for credit checks, title searches, appraisals and the like. The banking commissioner came to the Banks committee with a number of complaints from people where some of that money should have been returned to them once the lender had made a determination that they were not eligible for a loan. What the bill does is to give the banking commissioner the authority that once the credit check has been done, if the lender does not return the rest of the deposit and continues with his trust of having a title search and having an appraisal that would be a violation, and this bill gives him the authority to kind of rap him on the knuckles. We urge its adoption.

SENATOR W. KING: I want to thank Senator Fraser for all of the work that he has done on this bill. I think that it is very important that we send a message to folks in these tough economic times that when they go to a bank to borrow money for a mortgage, that if the bank finds out, with the least expensive process that they are not qualified, that bank or that mortgage company or anybody else isn't then going to spend additional amounts of their money to get an appraisal that is unnecessary because they already know that the people aren't qualified and they would then return that money. Let me say that most banks already do that. There are a few bad folks who are doing otherwise and that is what this bill was intended to address. It has the support of the banking commissioner who brought in an amendment on something called, "rate lock", but it was determined that that amendment was unnecessary based on the bill. Thank you.

Amendment adopted.

Ordered to third reading.

SB 36-FN-A, an act establishing a customized training program for economic growth and making an appropriation therefor. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: SB 36-FN-A which establishes a customized training program has been placed into the work force development package, **SB 94**; therefore, the committee recommends that this vehicle here be inexpedient to legislate, but the bill itself remains alive.

Committee report of inexpedient to legislate is adopted.

SB 68, an act to protect the Nansen ski jump facility as an historic property or resource. Economic Development committee. Ought to Pass with Amendment. Senator Barnes for the committee.

1735B

Amendment to SB 68

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a challenge grant to restore and preserve the Nansen ski jump facility.

Amend the bill by replacing all after the enacting clause with the following:

1 Challenge Grant to Restore and Preserve Nansen Ski Jump Facility.

I. The provisions of this act shall apply notwithstanding any provision of 1987, 258:2 as amended by 1992, 57:1 to the contrary, for a period beginning on July 1, 1993, and ending on June 30, 1995.

II. The commissioner of the department of resources and economic development is authorized to administer a challenge grant program under which the state shall provide matching funds equal to 25 percent of annual moneys raised by public or private sources for the purpose of restoring and preserving the Nansen ski jump facility. The matching funds provided by the state shall not exceed $100,000. The challenge grant program shall begin on July 1, 1993, and shall end on June 30, 1995. If sufficient moneys have not been raised to restore and preserve the Nansen ski jump facility as of June 30, 1995, then beginning on July 1, 1995, the provisions of 1987, 258:2 as amended by 1992, 57:1 shall once again apply, and the department of resources and economic development is authorized to seek the privatization of or the sale of the facility.

III. The sum of $100,000 for the biennium ending June 30, 1995, is hereby appropriated to the department of resources and economic development for the purpose of providing matching funds to restore and preserve the Nansen ski jump facility. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

IV. The appropriation to the department of resources and economic development in paragraph III shall be contingent upon the receipt by the state of the necessary matching funds raised from public and private sources.

2 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill authorizes the commissioner of the department of resources and economic development to administer a challenge grant program under which the state shall provide matching funds equal to 25 percent of any moneys raised by public or private sources for the purpose of restoring and preserving the Nansen ski jump facility. The matching funds provided by the state shall not exceed $100,000. The challenge grant program begins on July 1, 1993, and ends on June 30, 1995. If sufficient moneys have not been raised to restore and preserve the Nansen ski jump facility as of June 30, 1995, then beginning on July 1, 1995, the department of resources and economic development is authorized to seek the privatization of or the sale of the facility.

SENATOR BARNES: Being a freshman up here and finding out different things as I go along very quickly, in committee, I had some heavy duty questions about this bill when it first came to us and you see who has been asked to report it out, they are giving it to me to report it out. I think that I have learned a little something by that. Just to call your attention, the Senate Chamber has come into the headlines again from the Berlin reporter. We have gone all the way up into district one. I would just like to say that the committee would like to have this bill passed with amendment. What the amendment does and it is on page six of the calendar. It is a matching grant situation where the state will come up

with 25 percent and the private sector will come up with 75 percent. Our good Senator over there from district one is the lady who got this all going and got the ball rolling to get some other money into it other than the money from the state of New Hampshire. I hope that we can all vote for this to be ought to pass with amendment.

SENATOR COLANTUONO: How would the state get its money back from the use of the facility either directly or indirectly through additional economic development or other economic activity around the ski jump? In other words, how can a ski jump make money for the region or the state?

SENATOR BARNES: Chances are, Senator, this will never become a ski jump in operation again. It is a historic landmark to the city of Berlin and the vicinity. The money is going to come back into that area with the numbers of people who are going to be drawn into it to see this very historic ski jump that we have. It is a I am trying to recall the words from Senator Lamirande, I believe that, "historic" was the word that she did use, but the city looks to gain a great deal of economic help by having that ski jump put back together. I have been promised that we will get invitations to it when it is restored so that we can all come up and take a look at the wonderful work.

SENATOR COLANTUONO: You mean that if I want to go down and try that out, I am not going to be able to when it is restored?

SENATOR BARNES: There are some people in here that might vote for you to go down that ski jump. Also, Senator, myself, the two of us on a toboggan perhaps, but after seeing the pictures I wouldn't suggest that you and I go too near it until a later date.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 71, an act establishing a committee to study regional planning and economic development. Economic Development committee. Inexpedient to Legislate. Senator Cohen for the committee.

SENATOR COHEN: The Economic Development committee concluded that this bill, SB 71 should be folded into a larger bill which will be SB 157.

Committee report of inexpedient to legislate is adopted.

SB 86-FN-A, an act requiring a performance audit of the department of resources and economic development and of the office of state planning and making an appropriation therefor. Economic Development committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1808B

Amendment to SB 86-FN-A

Amend the bill by replacing section 2 with the following:

2 Appropriation. The sum of $1 is hereby appropriated for the fiscal year ending June 30, 1994, for the purposes of section 1 of this act. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

AMENDED ANALYSIS

This bill requires the legislative budget assistant to hire an independent consultant to execute a performance audit of the department of resources

and economic development and of the office of state planning. The performance audit and the resulting report must be completed no later than November 1, 1993.

The bill appropriates $1 for the cost of the performance audit.

SENATOR FRASER: Thank you, Mr. President, there was strong support for this bill. The Senate committee felt very favored. Senator Hollingworth's position was that these two agencies should be audited so that we know exactly what is going on. The amendment reduces the appropriation to $1. We urge its adoption and then let Senate Finance come up with the final amount.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 87, an act relative to capital investment. Economic Development committee. Ought to Pass with Amendment. Senator W. King for the committee.

1815B

Amendment to SB 87

Amend the title of the bill by replacing it with the following:

AN ACT

relative to capital investment, venture capital, capital access and the business finance authority and capital formation.

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose.

I. The general court finds that the supply and cost of capital contribute significantly to business activity and economic expansion. The general court recognizes that the supply and cost of capital are primarily functions of national and international markets beyond the control of state government. However, the general court finds that state public policy can enhance local capital markets to the advantage of commerce and industry. Therefore, the general court adopts this act to increase the supply of capital and credit for the operation and expansion of commerce and industry in New Hampshire.

II. A further purpose of this act is to encourage the creation of new business enterprises within the state by making venture capital more readily available to such enterprises. Sections 2 through 4 of this act create incentives for New Hampshire businesses to invest in new New Hampshire enterprises, by allowing a deduction in the calculation of a taxpayer's net income for purposes of the business profits tax equal to the amount of its investment in new New Hampshire enterprises.

2 New Paragraphs; Definitions. Amend RSA 77-A:1 by inserting after paragraph XXIII the following new paragraphs:

XXIV. "Qualifying venture capital fund" means any investment company, partnership, or other organization that notifies the commissioner, on a form to be prescribed by the commissioner, that it desires to be treated as a qualifying venture capital fund for purposes of this chapter.

XXV. "Qualifying venture capital investment" means capital made available to a qualifying start-up firm through equity or debt instruments, and capital previously provided a qualifying start-up firm that is no longer a qualifying start-up firm for reasons other than its failure to remain taxable under this chapter; or its failure to retain New Hamp-

shire as its headquarters and principal place of business. The commissioner may waive the requirements of a qualifying venture capital investment on a case-by-case basis if reasonable in order to allow the return of qualifying venture capital investments and any earnings thereon on a reasonable and businesslike basis.

XXVI. "Qualifying start-up firm" means a business organization which meets all the following criteria:

(a) The business organization is organized under the laws of New Hampshire.

(b) The business organization is subject to taxation under RSA 77-A.

(c) The apportionment of the business organization's gross business profits pursuant to RSA 77-A:3 results in at least 80 percent of such profits being taxable in New Hampshire.

(d) At least 80 percent of the proprietors, partners, officers, and employees of said business organization reside in New Hampshire.

(e) The business organization is not an affiliate or subsidiary of any business organization that, based on filings made for the 3 previous taxable periods, had an average taxable period tax liability pursuant to RSA 77-A of more than $250,000.

(f) The business organization is not an affiliate or subsidiary of any non-qualifying start-up firm that has contributed more than 25 percent of the capital contributions to a qualifying venture capital fund, which fund has, during the period of such contributions, provided capital to the business organization asserting status as a qualifying start-up firm.

(g) The business organization certifies by sworn statement to the commissioner that the business organization will retain New Hampshire as its headquarters and principal place of business for at least 10 years from the receipt of any capital from any qualifying venture capital fund. Such certification shall be on a form prescribed by the commissioner and is to be regarded as a contract between the state and the business organization, its successors and assigns.

3 New Section; Tax on Qualified Venture Capital Fund. Amend RSA 77-A by inserting after section 2-b the following new section:

77-A:2-c Tax on Qualified Venture Capital Fund. A tax is imposed at the rate of 8 percent upon the difference, if a positive sum, between any contributions, interest, or other income of any kind received or recognized by a qualifying venture capital fund during a taxable period, and qualifying venture capital investments made by such fund for said period.

4 New Paragraph; Deduction from Business Profits Tax. Amend RSA 77-A:4 by inserting after paragraph XVI the following new paragraph:

XVII. A deduction equal to any contribution made to a qualifying venture capital fund during the applicable taxable period.

5 Statement of Purpose. The general court in 1992, 262, codified as RSA 162-A, continued, expanded and modified the existing structure and powers of the industrial development authority, including renaming the agency the business finance authority, to empower the agency to implement more directly and with state resources economic development and credit enhancement measures. During the implementation of the new law, several modifications and amendments have become necessary to better and more fully implement the provisions of RSA 162-A. The general court finds that such modifications and amendments are integral parts of the original legislation and advance and serve a public purpose.

6 Salaries Added. Amend RSA 94:1-a, I by inserting in:

I. Group M, Chief financial officer, business finance authority.

II. Group O, Senior credit officer, business finance authority.

III. Group R, Executive director, business finance authority.

7 Reference Addition. Amend RSA 162-A:3 to read as follows:

162-A:3 Authority Created. There is hereby created the business finance authority, ***formerly operating and known as the industrial development authority,*** which shall be a body corporate and politic as an agency of the state having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by the legislature.

8 New Section; Administrative Officers. Amend RSA 162-A by inserting after section 5 the following new section:

162-A:5-a Administrative Officers; Compensation.

I. The board shall appoint an executive director, a senior credit officer, a chief financial officer, and other personnel determined by the board to be necessary to carry out the purposes of this chapter. The executive director, the senior credit officer, and the chief financial officer shall serve at the pleasure of the board and shall be qualified by reason of professional competence, education, and experience.

II. The salaries of the executive director, senior credit officer and the chief financial officer shall be as specified in RSA 94:1-a.

9 New Paragraph; Equity and Debt Securities. Amend RSA 162-A:6 by inserting after paragraph XVI the following new paragraph:

XVI-a. Acquire, invest in, pledge, or hold equity or debt securities issued with respect to any transaction pursuant to this chapter.

10 Loans Added. Amend RSA 162-A:7, I-IV to read as follows:

I. The authority may expend ***or loan*** money upon such terms and conditions as prescribed by the authority to acquire, develop, redevelop, construct, renovate, or expand real ***or personal*** property for business use. [Any such real property shall be owned either by the authority or by a local development organization.] No expenditure ***or loan*** shall be made by the authority under this section unless it is with the approval of, or in cooperation with, a local development organization.

II. Prior to the expenditure ***or loan*** of any money under this section [for property to be owned by a local development organization], the authority shall enter into one or more agreements with such organization to provide for the conditions on which the expenditures ***or loans*** will be made, the terms of repayment of such expenditure ***or loan,*** the time and manner of such repayment, conditions under which the property is to be used by or leased to one or more businesses, the form and amount of security if any, to be pledged to the authority for such repayment, and such other provisions as the authority may determine are necessary or desirable. Repayment of any expenditure ***or loan*** made by the authority may be with or without interest and may take the form of cash, property or services.

III. Any property acquired, developed, redeveloped, constructed, renovated, or [expended] ***expanded*** under this section may be leased by the authority or the local development organization, as appropriate, for business use, and under such terms and conditions as they shall deem appropriate. Any such lease may include options of the lessee to purchase the property, provided that the purchase price upon the exercise of any such option shall not be less than the amount necessary to reimburse the authority, with interest if applicable, for any unpaid balance of expenditures made by the authority for such property. Any lease shall obligate the lessee to pay all costs and expenses of upkeep, maintenance and operation of the property during the lease term.

IV. The authority shall not expend ***or loan*** any money or make a binding commitment to spend any money for a particular project under this section unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

11 Collection Expenses and Costs Added. Amend RSA 162-A:8, I to read as follows:

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of [and], interest on ***and collection expenses and costs related to*** any loan made by a private financial institution to any business that is or will be operating in the state, provided that the loan is also guaranteed in part under a program administered by the United States Small Business Administration. Such state guarantee shall be up to 90 percent of the portion of the loan not guaranteed through the United States Small Business Administration. ***The authority may execute and deliver any agreement or document required by the United States Small Business Administration to implement the guarantee program authorized in this section.*** The full faith and credit of the state shall be pledged for any such guarantee, but the total outstanding amount guaranteed by the state under this section and RSA 162-A:10, III shall not exceed in the aggregate at any time [$20,000,000] ***$40,000,000*** plus interest ***and related collection expenses and costs*** and shall not cause the contingent credit limit under RSA 162-A:22 to be exceeded.

12 Minimum Requirements Modified. RSA 162-A:8, III is repealed and reenacted to read as follows:

III. The sum of the guarantees issued to any one borrower by both the authority and the United States Small Business Administration shall not exceed $1,500,000 of principal, plus interest and reasonable collection costs and expenses. The total principal amount of any loan or loans guaranteed under this section made to one borrower to finance working capital shall not exceed $1,500,000.

13 Costs Added. Amend RSA 162-A:10, III to read as follows:

III. In order to facilitate the resale of loans acquired under this section the governor and council, at the request of the authority, may award a state guarantee of up to 90 percent of the principal of [and], interest on ***and collection expense and costs related to*** such loans. The full faith and credit of the state shall be pledged for such guarantee, but the total amount guaranteed by the state under this section shall be subject to the limit specified in RSA 162-A:8, I and shall not cause the contingent credit limit under RSA 162-A:22 to be exceeded. The state's guarantee of loans under this section shall be evidenced by a guarantee agreement between the state and the purchaser of the loans. Such guarantee agreement shall be assignable to any subsequent purchaser or purchasers of the loans and shall contain such provisions as the authority and the governor and council may deem appropriate. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairman, vice chairman, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw his warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

14 Costs Added. Amend RSA 162-A:13, I to read as follows:

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of [and], interest on ***and collection expenses and costs related to*** any loan made to a business that is or will be operating in the state[, provided that the loan does not qualify for a state guarantee under RSA 162-A:8]. Such state guarantee shall not at any time exceed 90 percent of the principal of, ***interest on and collection expenses and costs related to*** the loan [plus interest thereon]. The full faith and credit of the state shall be pledged for any such guarantee, but the total outstanding amount ***of original principal*** guaranteed by the state under this section shall not exceed in the aggregate at any time [$20,000,000] ***$40,000,000*** plus interest ***and related collection expenses and costs*** and shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

15 Appraisal and Certification. RSA 162-A:13, III(a) and (b) are repealed and reenacted to read as follows:

(a) The authority shall have an appraisal of an independent party which shall state that the appraised fair market value equals or exceeds 150 percent of the total principal amount of the loan.

(b) The authority shall have received a certification from the lender and the borrower which shall state that no more than 20 percent of the total principal amount of the loan shall be used to finance working capital.

16 Expenses of Authority. Amend RSA 162-A:21 to read as follows:

162-A:21 Revenues and Expenses of Authority. The revenues received by and due to the authority from any and all sources under this chapter and RSA 162-I shall be retained by the authority and shall be used in such manner as may be determined by the authority consistent with the provisions of this chapter. ***The authority may expend said funds in connection with transactions and projects consummated or proposed to be consummated under the provisions of this chapter and RSA 162-I as it shall determine in its sole discretion.*** It is the intent of the legislature that the authority be self-funding and that payment of its operating expenses shall not require state appropriation.

17 Statement of Purpose Regarding Capital Formation. The general court in 1992, 262, codified as RSA 162-A, continued, expanded and modified the existing structure and powers of the industrial development authority, including renaming the agency the business finance authority, to empower the agency to implement more directly and with state resources economic development and credit enhancement measures. The general court finds that the current regulatory environment with respect to banks and financial institutions and the recent decline in values of real estate in New England has created an imperfection in the private lending markets which prevents financing of commercial real estate interests. The general court further finds that commercial real estate interests are vital and integral parts of the business and economic infrastructure of the state. The general court further finds that the business finance authority should be authorized to evaluate and recommend the granting of credit enhancements to eliminate the existing imperfection in the financing markets with respect to commercial real estate.

18 New Section; Commercial Real Estate Support Program. Amend RSA 162-A by inserting after section 13 the following new section:

162-A:13-a Commercial Real Estate Support Program.

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council

may award a state guarantee of the principal of, interest on and collection expenses and costs related to any loan made to a business that is or will be operating in the state. Such state guarantee shall meet the requirements of paragraph III of this section. The full faith and credit of the state shall be pledged for any such guarantee; provided, however, that the total outstanding amount of original principal amount guaranteed by the state under this section shall not exceed in the aggregate at any time $5,000,000 plus interest and related collection expenses and costs and shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, and shall be executed on behalf of the state by the chairman, vice chairman, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw his warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated for the purpose of honoring any guarantee awarded under this section.

III. The following requirements shall be satisfied as conditions precedent to any guarantee obligation of the state:

(a) The loan with respect to which the guarantee is awarded shall have been existing or refinance existing indebtedness of the lender.

(b) The total credit risk of the lender immediately after the effectiveness of the guarantee shall not be reduced below the lender's existing risk immediately before such effectiveness, without taking into account the reduction in risk attributable to the guarantee, except as may occur through ordinary principal repayments required under the terms of the loan. For purposes of this paragraph, the evaluation of credit risk shall take into account such factors as determined by the authority including, but not limited to, the principal amount outstanding, repayment terms and default provisions.

(c) The maximum amount payable under the guarantee shall not exceed 35 percent of the appraised fair market value of the value of the commercial real estate which secures the loan with respect to which the guarantee is awarded.

(d) The amount guaranteed under this section shall be reduced by all payments of principal received on or collected in connection with the loan with respect to which the guarantee is awarded.

(e) In addition to the loan with respect to which the guarantee is awarded, the lender shall have provided to the borrower at all times during which the loan remains outstanding an additional loan or credit facility secured by all or a portion of the operating assets and revenues of the borrower or an operating affiliate of the borrower in a principal amount or capacity which requires payments of annual debt service, either under a term arrangement or through reductions in a line of credit, which equal or exceed 10 percent of the annual debt service required with respect to the commercial real estate loan at any time during which the state's guarantee obligation remains outstanding.

IV. The governor and council shall not award any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

19 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill:

(1) Adopts a statement of intent relative to encouraging capital investment.

(2) Creates incentives for businesses to invest in new enterprises by allowing a deduction from income for purposes of the business profits tax equal to the amount of contributions to a qualifying venture capital fund.

(3) Clarifies the duties and activities of the business finance authority. Specifically, the bill makes it clear that the authority may make loans and that the state guarantee includes collection expenses and costs related to any loan. The bill also increases the ceiling on state guaranteed loans from $20,000,000 to $40,000,000 and inserts into unclassified salary groups 3 positions in the business finance authority.

(4) Establishes the commercial real estate support program to allow the business finance authority to extend credit for commercial real estate ventures.

SENATOR W. KING: SB 87 is a bill that deals with capital investment issues. It makes some changes requested by the Business Finance Authority to give them a little more flexibility in providing assistance to businesses. It also contains the venture capital bill that we passed in the last session of this legislature with some changes to reflect the concerns that arose in the House itself. Finally, it has one additional provision, and that is a provision to help businesses that have had their lines of credit cut off not as a result of payments that they made and not as a result of any business failure that they made, but rather as a result of the diminution in property value of their real estate. This would allow the business Finance Authority to, in fact, encourage a bank to renew a line of credit that had its line of credit cut off by placing a small guarantee on a portion of the real estate for the business for exchange for the bank renewing the line of credit and for expanding the line of credit.

SENATOR COLANTUONO: Senator, could you let us know, those of us who are not on the committee as to this bill or to any other bills in your packages here today, whether there is any increased taxes or any increased fees in any of these bills. Whether there is increased bonding authority? And if so, what the state treasurer has to say about it, and whether there are any significant appropriations in this bill?

SENATOR W. KING: Well, clearly all of these things, Senator Colantuono, are going to have to go to Finance to determine whether or not we have the capacity to do that. There is not increased bonding authority . . . there are in several areas, some contingency authorities, in other words, guarantees. But all of the money in any of these things has been struck so that Senate Finance can determine whether or not that there is money available. There is a matching grants program that has $1 in it, Senate Finance will determine whether there is any money available for that. We will talk about that later. In some cases there are, but appropriations have been reduced to one dollar to allow Senate Finance to determine within the list of priorities that we determine are necessary, whether we have the money for.

SENATOR COLANTUONO: Thank you.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 88, an act relative to bonding for economic development projects. Economic Development committee. Inexpedient to Legislate. Senator Cohen for the committee.

SENATOR COHEN: The Economic Development committee chose to fold this into the new SB 157.

Committee report of inexpedient to legislate is adopted.

SB 89, an act relative to infrastructure. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: SB 89 was a packaged bill to deal with infrastructure and the committee decided that it was more appropriate to use the capital budget for that process.

Committee report of inexpedient to legislate is adopted.

SB 94, an act relative to workforce development. Economic Development committee. Ought to Pass with Amendment. Senator W. King for the committee.

1788B

Amendment to SB 94

Amend the title of the bill by replacing it with the following:

AN ACT
relative to workforce development, making an appropriation to the department of postsecondary technical education to support a pilot satellite program in Haverhill to promote north country economic development, establishing a customized training program for economic growth and making an appropriation therefor and creating a government council on economic transition.

Amend the bill by replacing all after section 1 with the following:

2 Purpose; Support of Pilot Satellite Program.

I. Technical college education is vitally important for economic development in New Hampshire, and it is essential that rural areas be served. This act provides increased postsecondary technical educational opportunities to residents of northern Grafton county by supporting a satellite office in Haverhill affiliated with the Berlin technical college. This program will serve as a pilot education and economic development project for other underserved areas of the state.

II. The state will support the Berlin technical college in establishing an office and providing a half-time local coordinator to administer a pilot satellite program in Haverhill which will provide postsecondary technical educational opportunities for residents of this geographic region.

3 Administration. This pilot satellite postsecondary technical program shall be administered by the board of governors, department of postsecondary technical education.

4 Federal Funds. Berlin technical college shall apply for any federal funds applicable to this program for which it qualifies.

5 Review Committee Established.

I. A committee shall be established by July 1, 1994 to review this program and make further recommendations whether to:

(a) Continue the support of the satellite program.

(b) Initiate plans for a new college facility.

(c) Initiate other steps deemed appropriate.

II. The committee shall consist of the following members:

(a) Two senators, appointed by the president of the senate.

(b) Two house members, appointed by the speaker of the house.

(c) The commissioner of postsecondary technical education, or designee.

(d) A selectman or designee from Haverhill, chosen by the selectmen.

(e) A member of the public, appointed by the governor.

6 Meetings; Compensation. The committee shall choose a chairperson from among its members. The members of the committee shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate when attending to the duties of the committee. The first house appointed member shall call the first meeting prior to August 1, 1994.

7 Report. The committee shall make a report regarding the continuation of this satellite program in Haverhill, including any recommendations for legislation, and submit its recommendations to the governor, the speaker of the house, the president of the senate and the Haverhill selectmen, on or before November 1, 1994.

8 Appropriation. The sum of $60,000 is appropriated for the fiscal year ending June 30, 1994, and $40,000 for the fiscal year ending June 30, 1995, to the department of postsecondary technical education, for the purposes of section 2 of this act. The governor is authorized to draw his warrant for said sums out of any money in the treasury not otherwise appropriated.

9 New Subdivision; Training Program Established. Amend RSA 188-F by inserting after section 47 the following new subdivision:

Customized Training Program for Economic Growth

188-F:48 Program Established. There is hereby established a program to provide customized training which attracts new business, assists in the expansion of business, and retains existing business in the state of New Hampshire.

188-F:49 Purpose. The purpose of this program is to:

I. Enhance the state's economic growth and vitality by offering assistance to privately owned businesses and industries in training a new work force and retraining existing employees to implement new technologies, in creating new jobs, and in retaining and upgrading existing jobs.

II. Provide technical education and training that shall become a major component of the state's economic development efforts.

III. To be flexible and responsive to the training needs of business and industry in New Hampshire.

188-F:50 Training Programs. Training programs may include, but shall not be limited to:

I. Structured, on-site laboratory or classroom training.

II. Basic skills.

III. Technical skills.

IV. Quality improvement.

V. Safety.

VI. Management and supervision.

VII. English as a second language.

188-F:51 Administration; Review Committee.

I. The department of postsecondary technical education shall administer this program.

II. The commissioner of postsecondary technical education shall:

(a) Adopt rules under RSA 541-A, relative to the administration of this subdivision.

(b) Appoint a grant review committee consisting of the following:

(1) The commissioner of the department of postsecondary technical education, or designee.

(2) The commissioner of the department of resources and economic development, or designee.

(3) The commissioner of the department of employment security, or designee.

(4) One member representing labor, nominated by the commissioner of postsecondary technical education and approved by the board of governors.

(5) Three members representing business and industry, nominated by the commissioner of postsecondary technical education and approved by the board of governors, one of whom serves on the New Hampshire Private Industry Council.

III. The committee members shall serve staggered 3-year terms and shall serve without compensation.

IV. The function of the committee shall be to make recommendations to the commissioner of postsecondary technical education concerning the award of training grants to businesses.

V. Notwithstanding any other law, the commissioner may award grants of $25,000 or less upon the recommendation of the grant review committee.

188-F:52 Eligibility for Training Grants.

I. In this chapter, "grant recipient" means the business entity that receives funds from the department and which provides funds to the training provider.

II. Only those businesses that are physically located or intend to be physically located within the state may receive funds under this subdivision.

III. Only those employees who are residents of New Hampshire, or who work for a business that is located or intends to locate within the state, shall receive training from grants under this subdivision.

IV. Grant recipients must match no less than one dollar for each dollar provided through the grant award. The match funds shall include only those costs extraordinary to the regular employee expenses incurred by the business and shall be directly related to training.

V. Priority shall be given for grants to small businesses in the manufacturing sector for the implementation of technological innovations.

VI. Award determinations shall be made in no longer than 20 working days after receipt by the department.

188-F:53 Eligible Costs.

I. To be eligible under this subdivision, a cost must be necessary and reasonable for the proper and efficient delivery of training to the employees of the grant recipient.

II. The following costs are not eligible:

(a) Costs resulting from violations of or failure to comply with federal, state, or local laws and regulations.

(b) Entertainment costs.

(c) Administrative costs.

(d) Salaries and wages of employees in training.

III. Funds for training grants shall supplement, and not replace, funds available through existing programs conducted by the business entity, or other public or private training programs.

IV. The department shall be authorized to use no more than 10 percent or $70,000 of any appropriation under this subdivision, whichever is less, to administer this program.

188-F:54 Training Facilities.

I. So long as it is feasible, training shall be provided by New Hampshire public, postsecondary technical institutions.

II. When New Hampshire public, postsecondary technical institutions cannot provide proper training, the training grant recipient will be free to contract with some other training entity approved by the department.

III. The provider shall be specified in the grant award.

188-F:55 Performance; Report.

I. Within the first year following the effective date of this subdivision, the board of governors shall establish performance criteria. The board shall submit annually at the end of each fiscal year a report indicating the level of performance achieved through this program. Performance indicators shall include the number of existing jobs retained or new jobs created as the result of this program.

II. The department shall evaluate the performance level for each training grant program provided to a business.

III. The grant recipient shall file the information required under RSA 188-F:55, I and II, as requested by the commissioner.

10 Appropriation. The sum of $500,000 for the fiscal year ending June 30, 1994, and the sum of $500,000 for the fiscal year ending June 30, 1995, are hereby appropriated to the economic development fund for the purpose of funding the training for economic growth program under RSA 188-F:48-55. The funds in this appropriation shall not be transferred or expended for any other purposes. The governor is authorized to draw his warrant for said sums out of any money not otherwise appropriated.

11 Purpose. The general court recognizes that the forthcoming reductions in federal military expenditures will affect a number of business organizations, large and small, in New Hampshire. The general court finds that a council should be established to assess the impact of reduced military production on the state's economy. The general court also recognizes that it is in the best interest of the state to encourage business organizations, with large percentages of their businesses tied to government defense contracts, to convert all or a portion of their defense production capabilities to civilian production. The general court finds that a credit against the business profits tax based on the percentage of defense business converted to civilian uses would help such business organizations make the transition to civilian production.

12 New Chapter; Government Council on Economic Transition. Amend RSA by inserting after chapter 12-G the following new chapter:

CHAPTER 12-H

GOVERNMENT COUNCIL ON ECONOMIC TRANSITION

12-H:1 Establishment and Duties.

I. There is established a government council on economic transition. The council shall assess the impact of reduced military production on the state's economy. The council shall also explore ways to convert productive capacity devoted to defense contracts and subcontracts to civilian production.

II. The council shall recommend a comprehensive state economic plan which shall establish a state policy providing for the orderly economic growth of businesses which have been dependent on military contracts.

The comprehensive economic plan shall include an analysis of these businesses' economic condition and needs, and a statement of specific goals and objectives.

III. The council shall:

(a) Provide a mechanism for the private sector to advise the public sector of its needs on an ongoing basis.

(b) Disseminate information among public and private sector units interested in fostering increased economic development and growth in New Hampshire.

(c) Provide for ongoing measurement of progress of state agencies involved in promoting economic activity among businesses which are dependent on military contracts.

(d) Provide coordination to maximize existing limited resources available in New Hampshire for economic development and growth.

12-H:2 Duties. The government council on economic transition shall consist of the following members:

I. One senator, appointed by the senate president.

II. One house member, appointed by the speaker of the house.

III. The governor or designee.

IV. The commissioner of the department of resources and economic development or designee.

V. A representative of the U.S. Small Business Administration, appointed by that organization.

VI. A representative of the Business and Industry Association of New Hampshire who has experience in the area of military and government contracts and economic development, appointed by that association.

VII. A representative of the New Hampshire Association of Commerce and Industry who has experience in the area of military and government contracts and economic development, appointed by that organization.

VIII. A representative of the New Hampshire International Trade Association with experience in the area of international trade, appointed by that association.

IX. A representative of the New Hampshire Bankers Association with experience in the area of economic development, appointed by that association.

X. The director of the Pease development authority, or designee.

XI. The director of the New Hampshire Small Business Development Center or designee.

XII. A representative of the U.S. Department of Commerce, appointed by such department.

XIII. A representative of the academic community, appointed by the governor.

XIV. A representative of organized labor, appointed by the governor.

12-H:3 Report. The council shall transmit a report of its findings and recommendations to the governor and council, the speaker of the house, and the senate president by January 1 of each year. The first report shall be transmitted by January 1, 1994.

13 Effective Date.

I. Sections 11 and 12 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill adopts a policy for the state of New Hampshire to ensure the optimal development of the human resources required for a more productive labor force.

This bill appropriates funds to the department of postsecondary technical education to support establishing an office and providing a half-time local coordinator to administer a satellite program in Haverhill affiliated with the Berlin technical college. This program will serve as a pilot education and economic development project for other underserved areas of the state.

This bill establishes a customized vocational training program designed to enhance economic growth in the state and makes appropriations for fiscal years 1994 and 1995. It also sets up a grant review committee to oversee the training grant process.

This bill also establishes a government council on economic transition. The purpose of the council is to assess the impact of reduced military production on the state's economy. The council shall also explore ways to convert productive capacity on defense contracts and subcontracts to civilian production.

SENATOR W. KING: SB 94 is an act dealing with the development of workforce. It includes the Haverhill technical program, it includes a bill, a very unique partnership between business and the technical school system that provides training funds for individuals who are currently at work. Right now there is big gap in our workers training program in the state of New Hampshire. We can provide training only when individuals are out of work. This particular program would allow for upgrading peoples skills while they were still in the workplace. The final aspect of this bill creates a government council on transition. It is essentially a blue ribbon task force which will look at the defense industry and make recommendations about how communities and businesses can work together to facilitate the transition from defense production to civilian production which is ultimately better at creating jobs, in fact, than defense production. But it is a painful process to have to go through and we are losing a lot of jobs, not only in New Hampshire but all over the United States over this.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 101-LOCAL, an act allowing local governments to share tax revenues arising from economic development. Economic Development committee. Inexpedient to Legislate. Senator Cohen for the committee.

SENATOR COHEN: SB 101 has been folded into, I believe that it is SB 196 which will be heard later.

Committee report of inexpedient to legislate is adopted.

SB 155, an act relative to the creation of a bi-state commission for economic security. Economic Development committee. Inexpedient to Legislate. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, SB 155 is part of the package that I will report under SB 158. I would urge the Senate to adopt the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 157-LOCAL, an act allowing municipalities to form economic development regions and create regional revenue bonds. Economic Development committee. Inexpedient to Legislate. Senator Cohen for the committee.

SENATOR COHEN: As with the other Economic Development bills this one, too, has been folded into a larger package which will be talked about a little later.

Committee report of inexpedient to legislate is adopted.

SB 158, an act relative to economic security. Economic Development committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1814B

Amendment to SB 158

Amend the title of the bill by replacing it with the following:

AN ACT

relative to economic security, establishing a housing security guarantee program and continually appropriating a special fund, creating a bi-state commission for economic security and allowing the housing finance authority to issue guarantees of certain home mortgage loans to help provide housing security.

Amend the bill by replacing all after section 1 with the following:

2 New Subdivision; Housing Security Guarantee Program. Amend RSA 126-A by inserting after section 89 the following new subdivision:

Housing Security Guarantee Program

126-A:90 Declaration of Purpose and Findings Regarding Housing Security. The legislature finds that the inability of individual citizens to amass sufficient funds for housing security deposits contributes significantly to the problem of homelessness in the state of New Hampshire; that a program of security deposit guarantees which is coordinated with other programs that address rental housing security could assist in alleviating that problem; that it is possible, and desirable, to structure and implement such a program without threatening the fiscal health of the state; that the financial health of the state shall indeed be served by enabling private housing opportunities; and that such a program is necessary for the public good, health, welfare, and stability of the state.

126-A:91 Program Established. There is hereby established a housing security guarantee program.

126-A:92 Definitions. In this subdivision:

I. "Division" means the division of mental health and developmental services, department of health and human services.

II. "Guarantee certificate" means a document issued under this subdivision that pledges the full faith and credit of the state of New Hampshire for the payment of the security deposit it guarantees.

III. "Landlord" means a person and such person's employees, officers, or agents who rent or lease to another person a housing unit, including single family homes, apartments, mobile homes, prefabricated homes, or other real or personal property used as a dwelling for one or more persons.

IV. "Local administrator" means the director, governing board, president or other official with organizational authority to direct the day-to-day operations of a local housing security authority as that term is defined in paragraph V.

V. "Local housing security authority" means a local governmental or private non-profit agency or organization whose legal authority or organizational documents, as applicable, expressly provide that one of its primary purposes is to administer and provide assistance to tenants in obtaining security deposit funding.

VI. "Qualified tenant" means a person whose total household income does not exceed the amount defined as "very low income," as adjusted for household size and region, as is defined and published from time to time by the United States Department of Housing and Urban Development.

VII. "Qualifying security deposit amount" means an adjustable amount consistent with local market conditions as determined by the local administrator and reported to the division; such amount not to exceed one month's rental fee for the subject housing unit.

VIII. "Security deposit" means any funds in excess of monthly rent which are required to be transferred from a tenant to a landlord for any purpose.

IX. "Security deposit guarantee application" means an application for a guarantee certificate made in accordance with RSA 126-A:94.

X. "Subject housing unit" means a specific dwelling unit, single family home, apartment, mobile home, prefabricated home, or other real property used as a dwelling for one or more persons that satisfies legal health and safety standards and is specifically designated on an individual security deposit guarantee application.

126-A:93 Allocation and Designation of Guarantee Capacity. Upon application from a local housing security authority in such form as the division may require, the division may allocate and commit itself to issue, and the local housing security authority may be authorized to process applications and provide the ancillary services connected with the issuance of, guarantee certificates for the purposes of this subdivision. In no event shall the aggregate guarantee amounts allocated by the division to all local housing security authorities exceed $1,000,000. The division shall allocate the aggregate guarantee certificate capacity authorized by this section in a manner which takes into account both housing needs and geographic diversity.

126-A:94 Application for and Issuance of Guarantee Certificates.

I. Applications for individual guarantee certificates shall be made jointly by a landlord and qualified tenant to a local housing security authority for the geographic region in which a subject housing unit is located. In the event such region is not serviced by a local housing security authority, applications shall be made to the division.

II. Applications for guarantee certificates shall include:

(a) Name, address, and telephone number of the landlord.

(b) Address of the subject housing unit.

(c) Name of the qualified tenant.

(d) The dollar amount of the requested security deposit.

(e) The dollar amount of the qualified tenant's income.

(f) The dollar amount of monthly rent to be charged for the subject housing unit.

(g) A copy of the subject lease or rental agreement, if any, governing the tenancy. If no written lease agreement is provided, program participants shall comply with the terms of form lease agreements prepared and provided by the division.

(h) Sworn certifications from both the landlord and the qualified tenant describing their prior participations in the security deposit guarantee program established under this subdivision.

(i) The landlord's written agreement to accept a guarantee certificate issued in accordance with this subdivision in lieu of any other security deposit.

(j) The qualified tenant's written agreement to make the periodic payments required by RSA 126-A:96.

III. Review of applications and decisions on such applications shall be performed and made by a local housing security authority or the division, as applicable, and completed within 5 business days of the submission of a completed application. When a local housing security authority approves an application, it shall immediately notify the division of such approval.

IV. Upon approval or receipt of a notice of approval by a local housing security authority of an application, the division shall immediately issue to the landlord a certificate of guarantee with a face value equal to the qualifying security deposit amount and issue to the qualified tenant a coupon book for periodic payments as required under RSA 126-A:96.

126-A:95 Delegation of Local Administration. The division may enter into written agreements or contracts with one or more agencies or organizations to provide for the administration and application of the guarantee program established under this subdivision for geographic areas not otherwise serviced by a local housing security authority. Such agreements shall specifically require the provision of coordinated services necessary to assure the success of this program, including such services as financial counseling, referrals to assistance agencies and organizations, and performance or payment monitoring and adjustments.

126-A:96 Periodic Payment Requirement. Beginning with the first month of tenancy and each month thereafter, a qualified tenant participating in this program shall make a monthly payment to the division of a fractional amount of the qualifying security deposit amount, which amount is determined by and adjustable with the approval of the local housing security authority. Notice of all adjustments to required payment amounts shall be immediately forwarded to the division by the local housing security authority. The payments shall be made until the full amount of the security deposit guarantee has been received by the division. Amounts received by the division shall be held in a fund, known as the security deposit fund, established in RSA 126-A:102 for this purpose. In no event shall a qualified tenant's failure to make the periodic payments required by this section create a default under any lease or rental agreement for a subject housing unit.

126-A:97 Redemption of Certificates in Event of Default.

I. In the event a default occurs which under the lease or rental agreement entitles the landlord to claim and retain some or all of the security deposit or a landlord initiates eviction proceedings in accordance with RSA 540:3 or RSA 540:6, in order to effect a redemption of a guarantee certificate issued under this subdivision, the landlord shall within 30 days of such default event or eviction submit to the local housing security authority:

(a) A certification of default and entitlement to some or all of the security deposit executed by the landlord under penalties of perjury, or a copy of its demand for payment and notice to quit prepared and served in accordance with RSA 540:3, 540:5, and 540:6, as applicable.

(b) A certification that the period of said demand and notice has expired, that no payments after notice as contemplated by RSA 540:9 or otherwise have been received, and that the subject housing unit has been vacated.

(c) A written request for redemption of its certificate of guarantee, specifying the amount requested and the issue date and number of the certificate.

II. After receipt by the local housing security authority of the materials required under paragraph I, the local housing security authority

shall have 30 days to issue a notice of approval, proposed adjustment or rejection, stating with specificity its grounds for such adjustment or refusal. Upon approval of a request for redemption, the local housing security authority shall immediately notify the division of such approval and the division shall have 5 days to redeem the certificate of guarantee.

126-A:98 Tenant's Right to Refund. In the event a tenancy is terminated before all periodic payments have been made to the division and no claim for redemption is brought by the landlord within the period specified, a qualified tenant may claim a refund of all payments made by the tenant and a cancellation of the tenant's written agreement to make any additional payments. The claims shall be brought by tenants within 90 days of the termination of the tenancy. All payment amounts unclaimed at the end of the 90-day period shall be held in a fund for the purpose of making payments upon redemption of guarantee certificates.

126-A:99 Mandatory Redemption of Certificates Without Default. When all periodic payments required by RSA 126-A:96 have been made in full by or on behalf of a qualified tenant participating in the program established under this subdivision, the division shall issue a notice to the qualified tenant and the landlord calling for the mandatory redemption of the guarantee certificate. A participating qualified tenant and landlord shall comply with such notice and submit the certificate for redemption, and the division shall pay to the landlord the amount stated in the certificate. Upon receipt of such payment, the landlord shall hold such payment as a security deposit pursuant to law and terms of the lease.

126-A:100 Guarantee; Credit of State Pledged. The full faith and credit of the state is pledged to support and redeem the certificates of guarantee issued by the division. In furtherance of that pledge, the state treasurer shall advance to the division from available cash in the treasury or from proceeds of bonds or notes of the state issued pursuant to this subdivision, such amounts as may be requested from time to time by the division to enable it to perform all guarantee obligations punctually and in accordance with their terms. The division shall request such advances from time to time as additional amounts are required for such purpose. The treasurer shall, subject to the approval of the governor and council, issue full faith and credit bonds of the state from time to time in amounts equal to advances made under this subdivision, and borrow in anticipation of the proceeds of such bonds. The obligation of the state under the provision of this section shall at no time exceed the amount of $1,000,000. A certificate of guarantee issued by the division in the hands of the original landlord to whom the certificate was issued shall be conclusive evidence of its validity for the purposes of this subdivision, except for fraud. Whenever the division pays to a landlord any sum in discharge of the state's liability as guarantor, except as required by RSA 126-A:9, the division shall be to that extent subrogated to the landlord's right, title and interest in any amounts received pursuant to the lease. Amounts received by the division to discharge the state's guarantee shall be returned to the treasury less any costs incurred in collection.

126-A:101 Rulemaking Authority. The division shall adopt rules, under RSA 541-A, relative to matters as are necessary to carry out the powers and duties of the division under this subdivision.

126-A:102 Fund Established. There is established in the office of the state treasurer a nonlapsing security deposit fund. The fund shall be continually appropriated to the director of the division to be used for the purposes of this subdivision.

3 New Subparagraph; Fund. Amend RSA 6:12, I by inserting after subparagraph (zz) the following new subparagraph:

(aaa) Moneys received under RSA 126-A:91 through RSA 126-A:101, which shall be credited to the security deposit fund established in RSA 126-A:102.

4 Commission Established. There is hereby established the bi-state commission for economic security. The commission is charged with working with a similar commission established by the state of Maine. The commission shall examine and evaluate factors affecting the economies of communities on the New Hampshire and Maine sides of the Piscataqua River and make recommendations for actions to enhance and improve the economic stability of the region. The commission may address problems of common concern and interests to the river and bay communities with the goal of giving advice and making recommendations to the legislature.

5 Members. The commission shall be composed of the following:

I. Three house members who shall be from the affected regions, appointed by the speaker of the house.

II. Three senators, who shall be from the affected regions, appointed by the senate president.

III. Two persons representing administration at the Portsmouth naval shipyard.

IV. Three persons representing the seacoast business community, appointed by the governor.

V. Three persons appointed by municipal officials from the New Hampshire seacoast area, who shall represent the town of Newington, the city of Dover, and the city of Portsmouth.

VI. Three persons representing employees at the Portsmouth naval shipyard.

VII. One person from the office of the New Hampshire representative for the first congressional district, appointed by that office.

6 Duties. The commission shall review the conditions of the communities surrounding the Piscataqua River and develop recommendations for actions to improve the economic future of this area. The members shall also hold at least one public hearing in a municipality on the Piscataqua River in the state of New Hampshire to gather the concerns and recommendations of the citizens of New Hampshire. The commission may accept grants from any source for research and development related to ocean going vessels.

7 Meetings; Compensation. The members shall choose a chairperson from among the commission members. The members of the commission shall serve without compensation, except that legislative members shall receive mileage at the legislative rate when attending to the duties of the commission. The first appointed house member shall call the first meeting within 30 days of the effective date of this section.

8 Contingency. Sections 4-7 of this act shall take effect when similar legislation is enacted in the state of Maine.

9 Purpose. The general court finds that conventional private financing mechanisms may fail to ensure that the state's citizens are able to maintain stable housing arrangements when property values and personal income are declining. The general court further finds that eligible persons and families may require assistance from the state in order to obtain optional financial arrangements from private entities. It is hereby declared that the governor and council, the state treasurer, and the housing finance authority shall be performing a governmental function, advancing a public purpose, and conferring a public benefit in carrying out the provisions of section 10 of this act.

10 New Subdivision; Housing Security Program. Amend RSA 204-C by inserting after section 85 the following new subdivision:

Housing Security Program

204-C:86 Purpose. The purpose of this subdivision is to assist eligible persons and families to obtain private financing necessary to maintain decent, safe, sanitary and affordable housing. It is the intent of the general court that this purpose be achieved through the issuance of guarantees in support of certain home mortgage loans.

204-C:87 Refinanced Home Mortgage Guarantees.

I. Upon application from a lender operating in this state in such form as the authority may require, the authority may issue, or commit itself to issue, a certificate of guarantee to the lender, or its assigns, of a principal residence loan. The total principal amount of any principal residence loan guaranteed under this section shall not exceed the sum of:

(a) Ten percent of the fair market value of the principal residence as determined by an independent third-party appraisal commissioned by the lender in connection with approving the loan;

(b) The amount of any payments of principal and interest which are in arrears under the terms of the existing mortgage loan incurred to acquire, construct or substantially improve such principal residence; and

(c) The amount of any local property taxes assessed with respect to such principal residence which have not been paid, and interest chargeable against such delinquent taxes.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee certificate issued by the authority on behalf of the state. Such guarantee certificate shall contain such terms and conditions as the authority may impose, including, without limitation, restrictions on the use of loan proceeds, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee.

III. The full faith and credit of the state shall be pledged in support of any such guarantee, provided that the aggregate amount of principal residence loans guaranteed under this section shall not exceed $5,000,000. In satisfaction of that pledge, the state treasurer shall advance to the authority from available cash in the treasury or from proceeds of bonds or notes amounts as may be requested from time to time by the authority to enable it to perform all guarantee obligations punctually and in accordance with their terms. The authority shall request such advances from time to time as additional amounts are required for such purpose.

IV. For the purposes of this section:

(a) "Principal residence" means a residence that is the primary residence of the eligible persons and families and does not include a residence that is used (1) primarily in a trade or business, (2) as an investment property or (3) as a recreational, vacation or second home. The term principal residence does include structures containing not more than 4 residential units, one of which is owner occupied.

(b) "Principal residence loan" means any loan which meets the following requirements:

(1) Repayment of principal and interest on the loan is secured by a first mortgage lien on the borrower's principal residence;

(2) The loan replaces or refinances existing indebtedness which was incurred to acquire, construct or substantially improve the borrower's principal residence; and

(3) The principal amount of the loan does not exceed 100 percent of the median purchase price of an existing single family home located in New Hampshire, as determined by the authority based on statistics periodically published by the federal government.

204-C:88 Guarantee Fund Established. In order to provide additional security to the state for any guarantee made under RSA 204-C:87, there is hereby established a guarantee fund which shall be held by the authority apart from all of its other funds, and which shall be deemed irrevocably pledged to secure all loans guaranteed under RSA 204-C:87. The authority shall be under no obligation to use its own funds for this purpose, and is hereby authorized to deposit moneys appropriated by the general court to support the housing security program into such fund. If a state guarantee is called upon to be honored the authority shall draw upon such fund for the purpose of honoring such guarantee, and only when amounts in the fund are exhausted shall the state treasurer be required to advance proceeds pursuant to RSA 204-C:87, II, to perform the guarantee obligations. Interest earned on amounts invested in the fund shall be accumulated and credited to the fund or paid to the authority, in its discretion. If at any time the amount in the fund exceeds 10 percent of the guaranteed portion of the principal of all loans guaranteed under RSA 204-C:87, or such higher amount as may be determined by the authority, the authority may withdraw the excess. The authority may enter into trust agreements, depository agreements, or other arrangements with one or more state banks in order to carry out the purposes of this section. The authority may accept gifts, grants, donations, pledges or other moneys from sources other than the state. Said moneys shall be deposited into the guarantee fund.

204-C:89 Programs for Public Purpose; Required Findings. The authority shall not take any action described in RSA 204-C:87 unless it makes the following findings, provided that the authority's board of directors may delegate this responsibility to the authority's executive director:

I. The proposed action will serve a public use and provide a public benefit.

II. The proposed action is within the policy of, and the authority conferred by, this subdivision.

III. In the case of a guarantee to be awarded under RSA 204-C:87, the proposed award of a guarantee will contribute significantly to the ability of a resident of this state to refinance successfully a principal residence loan.

IV. In the case of a loan to be made under RSA 204-C:87, the proposed loan will contribute significantly to the ability of a resident of this state to maintain current housing.

V. Reasonable and appropriate measures have been taken by the borrower to secure funds or assistance other than the guarantee or loan to be provided under this subdivision and such measures have been unsuccessful.

VI. Reasonable and appropriate measures have been taken to minimize risk of loss to the state and to ensure that any private benefit from the proposed action will be only incidental to the public purpose served.

204-C:90 Rulemaking. Notwithstanding RSA 204-C:53, the authority shall adopt rules, under RSA 541-A, to implement the provisions of this subdivision. These rules shall include, but not be limited to:

I. Eligibility standards for guaranteed housing assistance loans made under RSA 204-C:87. These standards shall include maximum income and asset limits for eligible borrowers.

II. The conditions and terms of loan guarantees issued and loan made under this subdivision.

III. Such other matters necessary to implement the provisions of this subdivision.

11 Exemption. The legislature declares that there is an urgent need for the programs created by section 10 of this act. Therefore, notwithstanding any provisions of RSA 541-A to the contrary, the authority may adopt rules to implement the provisions of section 10 of this act pursuant to RSA 204-C:53. The rules authorized by this section shall remain effective until such time as the authority adopts superseding rules under RSA 541-A. The authority shall commence rulemaking under RSA 541-A implementing the provisions of section 10 of this act no later than December 31, 1993.

12 Contingency. No moneys in the guarantee fund established under RSA 204-C:88 as inserted by section 10 of this act shall be expended or encumbered until the housing authority has raised $500,000 from sources other than the state.

13 Effective Date.

I. Sections 1-3 and 11 of this act shall take effect 60 days after its passage.

II. Sections 4-7 of this act shall take effect as provided in section 8 of this act.

III. Sections 9, 10, and 12 of this act shall take effect January 1, 1994.

IV. Section 8 of this act shall take effect upon its passage.

AMENDED ANALYSIS

This bill is relative to the economic security of the state's citizens.

Specifically, this bill:

(1) Establishes a program to assist eligible tenants in securing housing by guaranteeing their security deposits. The money loaned for such security deposit is to be paid back in fractional amounts, such amounts to be determined by the appropriate local housing security authority. The program is to be administered by the division of mental health and developmental services, department of health and human services.

(2) Establishes a bi-state commission for economic security. The duty of the commission shall be to examine and evaluate factors affecting the economics of communities on the New Hampshire and Maine sides of the Piscataqua River and to make recommendations for actions to enhance and improve the economic stability of the region.

(3) Establishes a housing security program to assist eligible persons and families in obtaining affordable housing by issuing guarantees for certain home mortgage loans. The program is to be administered by the housing finance authority.

SENATOR FRASER: Mr. President, SB 158 is a bill relating to economic security. Part one of the bill, which was formerly 212, had been referred to the Banks committee. It is legislation that would assist eligible tenants in securing housing by guaranteeing security deposits. It sets up a program entitled, "Housing Security Guarantee" to be administered by the Division of Mental Health, Department of Health and Human Services. It is a sincere effort by the state to address the homeless problem here in New Hampshire. A guarantee certificate is a document that pledges the full faith and credit of the state for the payment in the event of a default.

Only those with the incomes below the "very low income" level as defined by the United States Department of Housing and Urban Development would be eligible. It will be managed at the local level by the local Housing Authority. Application will be made partly by the applicant and by the landlord. Application decisions will be made by local housing and security authorities in local government and private nonprofit agencies whose primary purpose is to provide assistance to tenants in obtaining security deposit funding. It is required that the tenant make a monthly payment of a fractional portion of the security amount of the deposit to be determined by the local housing service authority. If there is a default, the landlord may retain all or part of the security. The state obligation shall not exceed $1 million. SB 155 which is part two of SB 158, Mr. President, refers to Interstate Cooperation. It sets up a bi-state commission for economic security with the state of Maine to address the economics of communities on both sides of the Piscataqua River. The commission will be comprised on three Senators, three Representatives, two representatives of the Portsmouth Naval Shipyard, three members of the seacoast business community; one each from the town of Newington, Dover and Portsmouth, three persons representing the employees of the Portsmouth Naval Shipyard and one person from Congressman Zeliff office. The entire focus will be to look at the economic issues on all of the effected communities on the Piscataqua River. The bill requires at least one public hearing to get input from the general public. The third part of SB 158, Mr. President, was formerly SB 189. What it does is it allows the Housing Finance Authority to issue guarantees on home mortgage loans. The funding for this program must come from the private sources, not from any state revenues. It sets up a fund for the sole purpose of securing all loans guaranteed under 204-c:87 and that will be a commitment that will be issued to the lender. The bill calls for a fund of $5 million. No monies will be expended until the Housing Authority has raised from sources other than the state, a minimum of $500,000. That is what the three bills that are now in 158 do, Mr. President. The Economic Development committee urges its adoption.

SENATOR MCLANE: Mr. President, I just wanted to add an enthusiastic word about the section of this bill which is SB 212. Senator Podles and I served on the homeless commission that has been located as part of the state Mental Hospital and they have done a lot with federal funds, particularly the Stewart funds, the Congressman from Washington. They have been very successful. I would say that New Hampshire could be proud of its homeless program in many towns, but one of the things that we discovered in their last annual report was that to keep someone in their own home by helping them with their security deposit on their rent costs $12 a person, but to keep a homeless person in a shelter was $200 a person. And so we decided to concentrate on that rental portion on which they had spent very little money. We have come up with, I think, a very unusual bill that will be administered by them. Senator John King and Senator Pignatelli are now on that commission and they will help with the workings of it. But you already have places set up in Manchester and in other communities where they are trying to help people with their rents and this will entitle them to some sort of relief from the state. So I enthusiastically support the inclusion in this bill.

SENATOR COLANTUONO: Senator Fraser, I understand the Housing Security program, part of the bill is designed to give some assistance to persons who might be falling behind on their loan payments and tax payments, is that correct?

SENATOR FRASER: Yes.

SENATOR COLANTUONO: And the state is committing a guarantee of up to $5 million for that program?

SENATOR FRASER: Yes.

SENATOR COLANTUONO: I don't see any appropriation. The only thing that I see is that, "no money can be spent by the state until the Housing Authority has raised $.5 million from other sources. Does that mean that this program will not go into effect until the legislature at some later date appropriates some money?

SENATOR FRASER: Senator Colantuono, the idea of the program is that this will be all funded by private funds. There is no state money involved in this program at all. Until the Housing Finance Authority can raise a minimum of $500,000 the first guarantee wouldn't be issued.

SENATOR COLANTUONO: So where is the money going to come from for the fund?

SENATOR FRASER: From private sources, anything outside of the state. There is no mandate on any particular part of the industry of the initial world that would be focused on, but the whole idea is to raise money from private funds in order to make this program work.

SENATOR COLANTUONO: The other guarantee programs that we have adopted in the last session or about to adopt in this session had fairly good guarantees or guarantees that the state wouldn't have to pick up the money, but would you believe that I am very concerned about this one because the types of people that you are trying to help here, namely persons who have fallen behind their mortgages or haven't paid their property taxes and are the very type of people who probably would be the least creditworthy and the most likely to default on these monies, so I just have a concern about that, would you believe?

SENATOR W. KING: Senator Colantuono, a couple of points: The $500,000 contingency fund is to care . . . that is specifically to cover the losses we hope to raise privately from sources. A couple of years ago, I believe that it was, the Wheelabrator Corporation or I guess that it was Henly that provided some money to the New Hampshire Charitable Fund that was used for purposes similar to this. The way that this bill is designed in effect would make that money go a lot further. New Hampshire today in the New York Times, New Hampshire is listed as the fifth highest state in the country in rates of foreclosures, and additionally, the fifth highest state in the country in rates of new foreclosures. The whole point behind this bill and the way that it is structured is that the bank is still going to have to continue the risk that is involved with the loan except for that small portion that is guaranteed. We have declining interest rates and yet our foreclosures continue to increase. In fact, the people who the banks decide are creditworthy enough to refinance their loans are going to have a better chance of preventing that foreclosure than otherwise would be possible because they're going to be able to be refinanced at a lower rate and the bank will not make that refinancing unless they are capable of making those payments at that lower rate based on their credit ratings just as they would before. So the important thing is that it is a lot less expensive for us to provide some guarantees to keep people in their homes than it is to deal with families that become homeless as a result of this or businesses that are lost as a result of the fact that their families lose their homes.

SENATOR COLANTUONO: I agree with the intent of the bill, obviously, my question that came to mind as you explained that was, does the state take second position behind the bank if there is a foreclosure subsequent to this guarantee being made?

SENATOR W. KING: The state would be responsible for the portion that they guarantee; however, the portion that is guaranteed would be reduced as payments are made to the principal of the loan, the portion of the guarantee would be reduced contemporaneous to the principal payments. Second of all, the contingency fund is there specifically for the purposes of covering guarantees that were made and therefore had to be collected because for some unknown reason the foreclosure had to take place. So consequently, the private funds would cover the contingency under those circumstances.

SENATOR COLANTUONO: Where does the money come from though, when a person wants to pay back the bank that they have fallen behind to? I take it that it doesn't come out of the contingency fund so where does it come from?

SENATOR W. KING: The bank refinances their loan and folds it into the finance if it meets the criteria and if the individuals continue to qualify even under those circumstances.

SENATOR COLANTUONO: Thank you.

SENATOR PODLES: Senator King, would you make something very clear to me, I can't seem to understand it? Administered by whom? You have two entities here that . . . could you explain that to me, the programs? I am looking at the amendment, Senator King.

SENATOR W. KING: I am sorry, I am not sure where you are. The Housing Finance Authority administers the refinancing piece. The administration of the Security Deposit program is with the Division of Mental Health.

SENATOR PODLES: So it is divided between those two?

SENATOR W. KING: It is two different programs. One is buying the house and one is renting the house.

SENATOR PODLES: Oh, okay, I didn't understand that. Thank you.

SENATOR W. KING: They're both to prevent homelessness though.

SENATOR MCLANE: I have a 'would you believe' answer to Senator Colantuono's would you believe. Would you believe that in Manchester where Sister Mary Sliney runs a similar program with some of the $200,000 that has been spent on security deposits, that her experience is that the people do pay the money back and that is why you get down to that $12 a person figure?

SENATOR W. KING: Thank you, Senator McLane, yes, I would believe that. I would also say though, that it is pretty clear to me that Senator Colantuono has legitimate concerns about the cost and we have tried very hard. And I know that you have had, and I know that those who helped to draft this bill, and did a good job, you drafted the McLane, Podles, piece of this bill, and did a wonderful job. It speaks to those concerns. I think that Senator Colantuono said himself that he was in favor of the idea and that he was just concerned about the expenditures. We have tried to make this as tight as we possibly could and as fiscally responsible as we possible could.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 159, an act relative to technological development. Economic Development committee. Ought to Pass with Amendment. Senator W. King for the committee.

1792B

Amendment to SB 159

Amend the title of the bill by replacing it with the following:

AN ACT

relative to technological development and relative to inventor assistance and making an appropriation therefor.

Amend the bill by replacing all after section 1 with the following:

2 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (zz) the following new subparagraph:

(aaa) Moneys received under RSA 187-A:34-42 which shall be credited to the inventor assistance program fund established under RSA 187-A:42.

3 New Paragraph; Credit Allowed. Amend RSA 77-A:5 by inserting after paragraph VIII the following new paragraph:

IX. The manufacturer's tax credit as computed in RSA 187-A:40.

4 New Subdivision; Investors Assistance Act. Amend RSA 187-A by inserting after section 33 the following new subdivision:

Inventors Assistance Act

187-A:34 Statement of Purposes. The general court recognizes the numerous benefits to the state's economic base from the establishment of businesses by inventors and the numerous benefits provided by inventors which include industrial diversification, broadening of the economic base, a great proliferation of jobs, providing financial benefits to our citizens through a greatly expanded tax base, and new products and processes for the nation's consumers. A great number of inventions are never authoritatively considered primarily because inventors are unfamiliar with the business environment or financial structure necessary for implementing their proposals. The general court, therefore, recognizes a need to encourage and assist inventors and, at the same time, to position this state as a leader in advanced and high technology and to foster a climate for those leaders of this state, the nation and the world.

187-A:35 Definitions. In this subdivision:

I. "Administrative head" means the executive director of the center.

II. "Center" means the industrial research center at the university system of New Hampshire, Durham campus.

III. "Commercial stage" means the point at which the product has advanced beyond the theoretical and prototype stage and is capable of being manufactured or reduced to practice commercially.

IV. "Committee" means the oversight committee established in RSA 187-A:32.

V. "Intellectual property" means property for which patent, copyright or trademark registration has been acquired pursuant to federal or state law or applications for patent, copyright or trademark registration have been filed.

VI. "Inventor" means any person who perceives a new concept which may result in a product or patentable process.

VII. "Person" means any individual, sole proprietor, partnership or corporation.

VIII. "Product" means any device, technique or process.

IX. "Product development plan" means a plan prepared by or for the center for developing a product to the commercial stage.

X. "Proposal" means a plan provided by the inventor which includes technical and descriptive information on the concept.

XI. "Proprietary product" means a product patented, copyrighted or trademarked pursuant to federal or state law, or for which an application for patent, copyright or trademark registration is pending.

XII. "Royalties" means all things of value received by an inventor in connection with the licensing, rental or sale or other disposition of a proprietary product patented, in patent pending, or trademarked pursuant to federal law.

187-A:36 Program Established. A program to provide assistance to inventors shall be established at the center. The program shall be designed to:

I. Attract inventors from throughout this state, the nation and other countries and encourage them to submit their proposals for review and evaluation.

II. Provide assistance to inventors whose proposals are accepted after evaluation and review. Assistance may include limited patent searches, market analysis, product research and development, assistance in obtaining financing, business counseling, and any other assistance necessary to develop the product to the commercial stage which is not prohibited by the constitution or laws of this state. To protect both the state and the inventor, a disclosure document shall be on file with the U.S. Patent Office before the state will review a proposal.

III. Provide assistance to enable the manufacturing, marketing and distribution of the product.

IV. Protect the confidentiality of each inventor's proposal to the extent permitted by law.

187-A:37 Powers and Duties. The administrative head, with the approval of the committee, shall:

I. Enter into contracts on a competitive bid basis with public and private agencies, institutions, organizations, firms and individuals for the purpose of providing assistance to and services for inventors as required by this subdivision.

II. Solicit the support and contributions of public and private agencies, organizations, institutions, firms and individuals.

III. Receive and administer funds for the purpose of operating the inventors assistance program.

IV. Hire administrative support personnel to meet the needs of the center.

V. Advertise and promote the inventors assistance program.

VI. Acquire security interests in intellectual property to the extent necessary to protect the state's interest in the fees charged pursuant to RSA 187-A:39.

VII. Enter into a written contract with each center employee which shall include provisions designed to protect the confidentiality of inventors' proposals and to prohibit the employee from using information gained at the center to compete with or disadvantage any inventor.

187-A:38 Proposals.

I. The center shall charge a filing fee of up to $100 for each proposal submitted for review and evaluation, depending upon the cost to research the proposal as determined by the center.

II. The center may review proposals at the center or may engage outside sources to assist in its review.

III. After review and evaluation, proposals shall be accepted or rejected for product development under the inventors assistance program.

IV. If a proposal is accepted for product development, the center shall prepare a product development plan which shall include a technical plan for developing the product, time schedule, and estimated cost. The center shall have an established policy for making decisions to develop products utilizing appropriate resources and bringing the products to a commercial stage. The services of the center may include limited patent searches, applications for patent, copyright registration, market analysis, product research and development, assistance in obtaining financing, including financing from private resources, and business counseling.

V. If the inventor is unable to finance all or part of the development according to the product development plan, the center may provide resources or services to aid in the development of the product.

VI. The inventor shall be liable to pay a fee according to policies set forth in RSA 187-A:39.

VII. The center shall enter into a written contract with the inventor which shall include provisions consistent with RSA 187-A:39.

187-A:39 Contracts. Before services to aid in the development of the product shall commence, the center shall enter into a contract with the inventor which shall include:

I. The services which the center will provide to aid in the development of the product.

II. Any other services which the center will assist the inventor in obtaining and for which the inventor shall be liable pursuant to written consent.

III. Authorization for the center to receive a fee not to exceed an amount equal to 10 percent of all royalties from the product for a period of 10 years from the first day after royalties are first received by the inventor.

IV. An agreement from the inventor that all products developed under the program shall be researched, developed, manufactured, packaged and distributed from this state to the extent that it is economically feasible, provided that a fee not to exceed an amount equal to 10 percent of all royalties from products developed under this program, wherever manufactured, shall accrue to this state pursuant to the provisions of this subdivision.

V. Provisions for acquisition by the center of any security interest in intellectual property as required to protect the state's interest and fees set forth in paragraph III.

VI. An agreement by the inventor that the assignment, sale, or licensing of a product or intellectual property developed under the program shall be subject to the center's security interest and that any contract with a third party for the assignment, sale or licensing of a product or intellectual property developed under the program shall explicitly condition such assignment, sale or license on the prior rights of the center.

VII. Provisions for such fiscal reporting by the inventor, the inventor's assignee, or licensee as may be necessary to assure the performance of all provisions of the written contract.

187-A:40 Incentive for Manufacturers; Rulemaking.

I. The tax credit under paragraph II shall be available to in-state manufacturers for products developed and manufactured in this state. To qualify for such credit the product shall be patented or have patent pending pursuant to federal law and shall be registered with the Department of Commerce.

II. A tax credit equal to 25 percent of the cost of depreciable property purchased and utilized directly in manufacturing the product shall be allowed under RSA 77-A to an in-state manufacturer of a product developed in this state by an inventor. The maximum credit shall be $100,000. If the credit allowed by this paragraph exceeds taxable income, the amount of the credit that is in excess of such income may be carried forward as a credit against subsequent taxable income for a period not to exceed 5 years. For the purposes of this paragraph, "depreciable property" means machinery, fixtures, equipment, buildings, or substantial improvements thereto, placed in service in this state during the taxable year.

III. The department of revenue administration, in conjunction with the department of resources and economic development, shall adopt rules under RSA 541-A to implement the provisions of this section.

187-A:41 Annual Report. The center shall submit an annual report on or before December 31 of each year to the governor, the governor's executive council, and the committee. The report shall include statistics for the following:

I. Proposals submitted for review and evaluation.

II. Proposals accepted for development and the number rejected.

III. Products receiving patents.

IV. Products developed to the commercial stage.

V. Jobs created and preserved as a result of the manufacturing, marketing, packaging, warehousing, and distribution of products.

187-A:42 Inventors Assistance Program Fund. There is hereby established a fund to be known as the inventors assistance program fund. This fund shall consist of all moneys received by the center for implementation of the Inventors Assistance Act under RSA 187-A:34 - 187:42 and all fees received pursuant to this subdivision. The center is authorized to accept public sector and private sector grants, gifts, donations and royalties of any kind for the purpose of funding the program established under this subdivision. Such grants, gifts and donations shall be deposited in the inventors' assistance fund and may be expended by the administrative head of the center to accomplish the purposes of this subdivision.

5 Appropriation. The sum of $500,000 for the biennium ending June 30, 1995, is hereby appropriated to the industrial research center at the university system of New Hampshire, Durham campus for deposit into the fund established in RSA 187-A:42 to be used for the startup costs of the inventors assistance act. The governor is authorized to draw his warrant for said sum out of any moneys in the treasury not otherwise appropriated.

6 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill adopts a policy for the state of New Hampshire to further partnerships between public educational institutions and private commercial enterprises to aid technological development.

This bill establishes an inventor assistance program to provide assistance to inventors. Under this bill, inventors would submit an application with a fee of $100 to the industrial research center at the university of New Hampshire at Durham. If the proposal is accepted, there would be a contract between the center and the inventor authorizing the center to receive a fee not to exceed 10 percent of all royalties from the product for 10 years from the first day after royalties are received by the inventor and establishing that the center will aid in the funding of the product.

The bill establishes a fund to be administered by the administrative head of the industrial research center. The bill makes an appropriation for the startup costs of the program.

The bill also offers as an incentive, to in-state manufacturers who produce an inventor's product, a credit against the business profits tax.

SENATOR W. KING: As most of you will remember one of the best things that we did in the last session of this legislature was to create the Industrial Research Center at the University of New Hampshire to assist businesses with product development. One of the problems with the language that initiated that center was that it really didn't assist entrepreneurs who were just developing products. So part of this bill is an inventors assistance act which will provide some assistance through the Industrial Research Center to inventors to help them bring their product to market. In exchange for that assistance, the Industrial Research Center would be entitled to royalties on the product once it is brought to market. There will be an initial cost to this but it will be self-funding after a very short period of time. The appropriation in this section of the act is only $1 again, to let Finance deal with whether or not we have the dollars available. The second part of this bill, pardon me, that is the only piece of the bill, but there will be some other issues discussed in Finance that this committee did not have the time to get to: specifically, to codify where exactly the Research Park will be at Pease Air Force Base in conjunction with The Pease Development Authority and possibly the creation of a high technology commission which was suggested by the BIA at one of our meetings, but we did not have the time to prepare language for it.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 161-FN-A, an act establishing an economic development matching grants program and making an appropriation therefor. Economic Development committee. Inexpedient to Legislate. Senator Cohen for the committee.

SENATOR COHEN: It was the pleasure of the Economic Development committee to hear a number of bills in recent weeks all relating to municipal economic development. There were some separate bills and SB 71, 88, 101, 157 and 161 have all been folded into this bill which in essence gives municipalities the option of using some effective new tools for grassroots regional economic development. As you can see on page 24 the act now is a long title, so it is relative to municipal economic development, establishing a committee to study regional planning and economic development, allowing towns to establish industrial development authorities relative to bonding for economic development projects, allowing local governments to share tax revenues arising from economic development, establishing . . . . The Senator is in error. This report was on SB 196.

SENATOR HOUGH (In the Chair): The Senator from District 24 has just done a report on a bill that we are going to kill. Senator Cohen moves the committee report.

SENATOR COHEN: I move the committees report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 179-FN-A, an act creating a government council on economic transition and a credit against the business profits tax for conversion of defense production to civilian production. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: I move inexpedient to legislate and to say that this was folded into SB 158.

Committee report of inexpedient to legislate is adopted.

SB 188-FN, an act relative to capital formation. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: I move inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 196, an act relative to municipal economic development. Economic Development committee. Ought to Pass with Amendment. Senator Cohen for the committee.

1816B

Amendment to SB 196-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

relative to municipal economic development, establishing a committee to study regional planning and economic development, allowing towns to establish industrial development authorities, relative to bonding for economic development projects, allowing local governments to share tax revenues arising from economic development, and establishing an economic development matching grants program and making an appropriation therefore.

Amend the bill by replacing all after section 1 with the following:

2 Committee Established. There is hereby established a committee to study the issue of regional planning and economic development. The committee shall be composed of the following:

I. One senator, appointed by the senate president.

II. One representative, appointed by the speaker of the house.

III. A representative of small business, appointed by the Portsmouth Chamber of Commerce.

IV. A representative of a large public corporation, appointed by the Business and Industry Association of New Hampshire.

V. A member with expertise in the financial industry, appointed by the governor.

VI. A member with expertise in financial planning, appointed by the governor.

VII. A member with expertise in job training, appointed by the governor.

VIII. A member with expertise in marketing, appointed by the governor.

IX. A representative of the New Hampshire Municipal Association, appointed by such association.

X. A representative of a lending institution, appointed by the governor.

XI. A representative of the Office of Economic Initiatives of the University of New Hampshire, appointed by the president of the University.

XII. The director of a regional planning commission.

XIII. A planner/architect.

XIV. A town manager.

XV. An economic development director.

XVI. A representative from the north country area with expertise in planning and economic development, appointed by the governor.

XVII. A member of the board of directors of the business finance authority, appointed by the chairperson of the board.

XVIII. A representative from a chamber of commerce, appointed by the governor.

XIX. A representative of a local development corporation, appointed by the governor.

XX. A representative of a regional development organization, appointed by the governor.

XXI. The commissioner of the department of resources and economic development, or designee.

XXII. A director of a regional planning agency, appointed by the Regional Directors Group.

XXIII. A commissioner of the public utilities commission, appointed by the chairman of the commission.

XXIV. A chief executive officer of a manufacturing business, appointed by the governor.

XXV. A representative of the Small Business Development Center - N.H., appointed by the center.

XXVI. A representative from the Nashua Chamber of Commerce, appointed by the chamber.

3 Meetings. The committee shall be chaired by the first-appointed senator and the first meeting shall be held within 30 days after the effective date of this section. All subsequent meetings shall be held at the call of the chair.

4 Report. The committee shall report its findings and recommendations for legislation to the governor, senate president and the speaker of the house on or before November 1, 1993.

5 Mileage. The committee shall not receive compensation for committee activities, but legislative members shall receive mileage at the legislative rate.

6 Allowing Towns to Establish Industrial Development Authorities. Amend RSA 162-G:1 to read as follows:

162-G:1 Adoption [by Cities]. [In any city which adopts the provisions of this chapter that city] ***Notwithstanding any other provision of law, any municipality of the state, or any group of municipalities,*** shall have all of the authority, powers, duties and responsibilities set forth [therein] ***in this chapter***. Adoption shall be by a majority vote of all the members of the city or town council, ***for those municipalities having a city or town council,*** or ***by majority vote of those voting at town meeting for those municipalities governed by town meeting and*** after a public hearing before the council of which notice has been given as provided in RSA 21:32. [No town may adopt the provisions of this chapter nor may a town have the authority, powers, duties and responsibilities set forth therein.]

7 Adding Towns. Amend RSA 162-G:2 to read as follows:

162-G:2 Declaration of Need and Purpose. It is hereby declared that there is a need for the development of industrial, manufacturing and warehouse facilities within the state in order to alleviate and prevent unemployment, to insure the continued growth and prosperity of the state, and of the [cities] ***municipalities*** within the state and to promote

the general welfare of all its citizens. It is the purpose of this chapter to authorize the [cities] ***municipalities*** of the state to foster and encourage the development of industrial facilities within or without their respective boundaries, acting directly or through an industrial development authority or a voluntary, nonprofit corporation, alone or in concert with one or more other governmental units, by acquiring, developing, expanding, leasing and disposing of such facilities, where such development is more appropriate under this chapter than under RSA 162-A or RSA 162-E, as determined by the [governing] ***legislative*** body. It is further declared that the acquisition of title to such facilities, either directly or through an industrial development authority or a voluntary, nonprofit corporation, and the lease or sale of such facilities as provided hereunder is a public purpose and shall be regarded as performing an essential governmental function in carrying out the provisions of this chapter. However, competition among communities in this state merely for the purpose of seeking relocation of industrial facilities located in this state is contrary to the policy of this chapter.

8 Definitions Changed to Include Towns. Amend RSA 162-G:3, II and III to read as follows:

II. "Governing body" shall mean the board or body in which the general [legislative] ***executive*** powers of the governmental unit are vested ***as defined in RSA 21:48***.

III. "Governmental unit" shall mean [a city] ***any municipality of the state.***

9 New Paragraph; Defining Legislative Body. Amend RSA 162-G:3 by inserting after paragraph V the following new paragraph:

V-a. "Legislative body" shall mean legislative body as defined in RSA 21:47.

10 Signatures of Town Officials on Bonds. Amend RSA 162-G:7, II to read as follows:

II. Bonds shall bear the manual signature of the mayor and city treasurer if issued by a city having a mayor - council form of government or of the [city] ***municipal*** manager and [city] ***municipal*** treasurer if issued by a [city] ***municipality*** having a manager-council form of government ***or of a selectman and the treasurer of a town having a town meeting form of government;*** and interest coupons, if any, shall bear the manual or facsimile signature of the treasurer in each case. Bonds shall also bear the seal of the governmental unit or a facsimile [thereof] **of *such seal.*** Bonds executed as [herein] provided ***in this section*** shall be valid notwithstanding that before the delivery [thereof] ***of the bond*** and payment [therefor] ***for the bond*** any or all of the persons whose signatures appear [thereon] ***on the bond*** shall have ceased to hold office.

11 Adding Towns. Amend the introductory paragraph of RSA 162-G:8, I to read as follows:

I. Except as provided in paragraph II, the municipality shall not acquire any industrial facility, or execute any lease or trust indenture or issue any bonds with respect thereto, unless the legislative body has found after a hearing that the proposed acquisition, leasing, operation and use of such industrial facility will serve a public use and provide a public benefit and that such acquisition and leasing will be within the policy of and the authority conferred by this chapter. The [city council] **legislative body** shall, before or after hearing, determine the appropriateness of proceeding under this chapter as required under RSA 162-G:2. The determination required by this section may be made by the legislative body only after finding to its satisfaction that:

12 Changing Governing Body to Legislative Body. Amend RSA 162-G:8, II to read as follows:

II. Notwithstanding the requirements of paragraph I of this section, the municipality acting through its industrial development authority may acquire facilities, purchase options to buy industrial facilities, and execute agreements to purchase leases and notes and mortgages with respect thereto, if the industrial development authority makes the findings and determinations required under paragraph I, provided that no contract entered into by the industrial development authority under this section shall commit the municipality to make expenditures in excess of the total of appropriations by the [governing] ***legislative*** body specifically for meeting the commitments made and the income from leases and subleases of the subject premises. In all instances the public benefit shall be demonstrable.

13 Adding Towns. Amend RSA 162-G:10 to read as follows:

162-G:10 Action by the Governmental Unit. In [a city] ***any municipality,*** action by the governmental unit shall be authorized by a majority vote of all the duly elected members of the city **or town** council or by ***a majority vote of those***. Action under this chapter may be in concert with the industrial development authority acting under RSA 162-A or RSA 162-E or projects may be sold to such authority at any time during their development. Industrial facilities may be located outside the boundaries of the governmental unit undertaking the project if such projects are approved by the [governing] ***legislative*** body of the city or town in which they are located as follows: if the facility is to be located (a) in a city, by a majority vote of all the duly-elected members of the city council or (b) in a town, by a vote of 2/3 of the registered voters present and voting at a regular or duly-called special town meeting. No action may be taken by a [city] ***municipality*** less than 7 days after the hearing.

14 Adding Towns. Amend RSA 162-G:15-a to read as follows:

162-G:15-a Action Through Industrial Development Authority.

I. In any [city] ***municipality*** which adopts this chapter, the powers and duties granted by this chapter, except those related to findings and approvals of the legislative body and the obligations of the municipality, may be exercised by the [city] ***municipality*** acting through an industrial development authority established under this section.

II. The legislative body in any [city] ***municipality*** may establish an industrial development authority to exercise such powers and duties in the following manner:

(a) The authority shall consist of a board of directors of not less than 9 nor more than 15 members appointed for 3-year terms. A majority of the board members shall reside within the boundaries of the [city] ***municipality***. The board members shall be appointed by the mayor subject to the provisions of the city charter. ***In a town governed by town meeting and following town meeting approval to establish an industrial development authority, the board members shall be appointed by the governing body.*** The terms of the initial members of the board so established shall be staggered so that 1/3, or as close to 1/3 as possible, of the board members will be appointed each year.

(b) The legislative body may provide that such [city] ***municipal*** officers as it designates shall serve as ex officio nonvoting members of the board in addition to those members appointed under subparagraph (a).

III. All actions by the authority under this chapter shall be authorized by resolutions of the board passed on the affirmative votes of at

least 2/3 of the board members present and voting, the majority of whom shall reside within the boundaries of the [city] ***municipality.***

15 New Section; Collective Municipal Economic Development Projects. Amend RSA 35-A by inserting after section 41 the following new section:

35-A:42 Collective Municipal Economic Development Projects; Agreements.

I. Any number of towns or cities may join collectively to exercise any rights available to a governmental unit under the provisions of this chapter, provided that such collective effort is limited to the raising of funds for economic development projects. For the purposes of this section "economic development projects" means existing or proposed projects designed in part to create, retain, or improve jobs within one or more of the towns or cities which collectively exercise any rights of a governmental unit under this chapter.

II. Once any number of towns or cities join together for the purposes described in paragraph I, such combination shall be known as a multi-governmental unit. Any multi-governmental unit may enter into such written agreements as the respective governing bodies of the various towns and cities involved shall approve concerning valuation and distribution of the benefits intended by the economic development project.

16 Revenue Sharing. Amend the introductory paragraph to RSA 53-A:3 to read as follows:

Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised jointly with any other public agency of this state. ***Such authority shall include, but not be limited to, the power to enter into agreements to share tax revenues resulting from local economic development efforts.***

17 New Subdivision; Economic Development Matching Grants Program. Amend RSA 12-A by inserting after section 31 the following new subdivision:

Economic Development Matching Grants Program

12-A:32 Economic Development Matching Grants Program. An economic development matching grants program is established to assist municipalities in promoting themselves to prospective businesses. For the purposes of this subdivision, "program" means the economic development matching grants program.

I. The department of resources and economic development shall administer an economic development matching grants program in cooperation with a program screening committee. The funds appropriated for this program shall be expended for grants for advertising programs entered into by municipalities which are designed to promote the location of new businesses in the state of New Hampshire.

II.(a) The screening committee shall consist of the director of the division of economic development and 6 other members appointed as follows:

(1) One member appointed by the governor and council upon nomination by the commissioner of resources and economic development.

(2) Two members appointed by the governor and council upon nomination by the New Hampshire Municipal Association.

(3) Three members appointed by the governor and council upon nomination by the New Hampshire Association of Commerce and Industry.

(b) Members, other than the director of the division of economic development, shall serve for a term of 3 years and until their successors are appointed and qualified.

III. The screening committee shall elect its own chairman. Members may designate an alternate with the approval of the chairman. A majority of the members of the committee or their alternates shall constitute a quorum.

IV. Members of the screening committee shall not be compensated; however, the commissioner of resources and economic development may set aside up to one percent of the funds appropriated for the program in any fiscal year to reimburse committee members for their direct expenses associated with the program. The commissioner shall review and approve all requests for reimbursement.

V. Funds appropriated to the program shall only be made available to municipalities as may be certified by the screening committee with the approval of the commissioner of the department of resources and economic development.

VI. Grant awards shall require 50 percent matching funds from private sources. Grants shall not be used for the administrative salaries or overhead expenses of any applicant selected for a grant.

VII. Grant applications shall be reviewed by the screening committee which shall recommend approval or disapproval of applications to the commissioner of resources and economic development. A recommendation for disapproval by the screening committee or the commissioner shall be in writing with the reasons for disapproval stated.

VIII. Funds appropriated for the program for the first fiscal year of any biennium shall not lapse and shall be available for expenditure during the second fiscal year of the biennium. All funds which have not been expended by the end of the second fiscal year of a biennium shall lapse to the general fund.

IX. The commissioner of resources and economic development shall, with the advice of the screening committee, adopt rules under RSA 541-A after public hearing governing the program. These rules shall include:

(a) A description of the program, stating the general course and method of its operations and the methods by which the municipalities may obtain information or make submissions or requests.

(b) The procedures and criteria used to certify municipalities eligible for matching grants.

(c) The application process, including the information required of applicants.

(d) The procedures and criteria used to evaluate grant applications.

(e) Procedures for the administration of grants by recipients including reporting requirements.

18 Appropriation. The sum of $1 for the fiscal year ending June 30, 1994, is hereby appropriated to the department of resources and economic development for the purposes of section 17 of this act. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

19 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill:

(1) Declares it the intent of the general court to establish more effective partnerships between state and municipal government in the pursuit of economic development.

(2) Establishes a committee to study regional planning and economic development.

(3) Allows towns to engage in the acquisition, development and disposal of industrial lands and facilities. The current law allowing cities

to establish industrial development authorities specifically precludes towns. The bill brings the use of the terms "legislative body" and "governing body" in RSA 162-G into conformity with the statutory definitions provided in RSA 21:47 and 21:48.

(4) Allows a number of towns and cities to join together for the purpose of economic development projects to form a governmental unit to take advantage of the benefits of the New Hampshire municipal bond bank.

(5) Allows local governments to enter into agreements among themselves to share tax revenues arising from local economic development efforts.

(6) Establishes an economic development matching grants program to assist municipalities in promotions to encourage businesses to relocate to the applicant's municipality. The bill establishes a committee to screen applicants for the grants, which will require 50 percent matching funds from private sources. The bill grants rulemaking authority, with the advice of the screening committee, to the commissioner of resources and economic development. The bill makes an appropriation to the department of resources and economic development for the purposes of this bill.

SENATOR COHEN: As I was saying . . . I move the committee report of ought to pass on this bill.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

SB 212-FN-A, an act establishing a housing security guarantee program and continually appropriating a special fund. Economic Development committee. Inexpedient to Legislate. Senator Fraser for the committee.

SENATOR FRASER: I moved inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 232-FN-A, an act relative to inventor assistance and making an appropriation therefor. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: I move inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 233-FN, an act authorizing the Pease development authority to issue qualified tax-exempt private activity bonds. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: It was determined that SB 233 was technically something that could already be done by the Business Finance Authority; however, Senator Hollingworth's concern was well noted that nothing in fact was being done between the Business Finance Authority and the Pease Development Authority. The Economic Development committee agreed that we will send a letter to the Business Finance Authority urging them to work more closely with the Pease Development Authority towards greater economic growth not only in the seacoast area, but statewide.

Committee report of inexpedient to legislate is adopted.

SB 237-FN-A, an act relative to venture capital. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: I move the committee report to say that this is folded into SB 87.

Committee report of inexpedient to legislate is adopted.

SB 242-FN, an act relative to capital access and the business finance authority. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: I move the committee report. This bill was folded into SB 87.

Committee report of inexpedient to legislate is adopted.

SB 128, an act relative to forest conservation. Environment committee. Ought to Pass with Amendment. Senator Pignatelli for the committee.

1817B

Amendment to SB 128

Amend the title of the bill by replacing it with the following:

AN ACT
relative to the cutting of timber and requiring the director of the division of forests and lands to recodify the existing forest practice laws.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Clearcutting of Timber. Amend RSA 224 by inserting after section 52 the following new subdivision:

224:52-a Definitions. In this subdivision:

I. "Basal area" means the cross sectional area of a tree measured at a height of 4-1/2 feet above the ground, expressed in square feet per acre for a strand of trees.

II. "Beaver flow" means a body of standing water impounded by the activity of beavers.

III. "Clearcut" means any timber harvesting on a forested site greater than 2 acres which results in an average residual basal area of trees over 6 inches in diameter of less than 30 square feet per acre.

IV. "Log landing" means an area which has been cleared of trees or vegetation for the purposes of stockpiling, transferring, and processing logs prior to trucking.

224:52-b Cutting of Timber Near Certain Waters and Public Highways and Above Certain Elevations in the State.

I. No more than 50 percent of the basal area of trees shall be cut, or otherwise felled:

(a) Within 75 feet of the bank of any stream that flows throughout the year and appears on the United States geological survey 7-1/2 minute series topographical maps, any beaver flow, or any pond between 2 and 10 acres;

(b) Within 150 feet of any great pond or public highway class I-IV; or

(c) On lands which are above 2,700 feet in elevation. Unless the person who cuts or otherwise fells trees or causes trees to be cut or otherwise felled, obtains the prior written consent of the director of the division of forests and lands or his agents.

II. No log landing shall be placed:

(a) Within 75 feet of the bank of any stream that flows throughout the year and appears on the United States Geological Survey 7-1/2 minute series topographical maps, any beaver flow, or any pond between 2 and 10 acres; or

(b) Within 150 feet of any pond greater than 10 acres. Unless the person who places or causes to be placed the log landing obtains the prior written consent of the director of the division of forests and lands or his agent.

224:52-c Written Consent.

I. Prior to the director's granting a request to exceed the limits defined in RSA 224:52-b, the landowner shall demonstrate that it is necessary to exceed such limits to practice sound forest or wildlife management, or to convert the land to a non-forest use. The landowner shall submit a standard request form to the director of the division of forests and lands at least 30 days prior to commencing the operation.

II. Failure of the division to act upon the request within 30 days shall serve as automatic approval.

224:52-d Restoration. The director of the division of forests and lands may require any person in violation of the provisions of this subdivision to stabilize, plant, or otherwise restore the affected area to the standards set forth by the director or his agents, within such reasonable time as the director may determine. The restoration notice shall require that the restoration determine not exceed 180 days from the service of the restoration notice. The following shall be considered cause for notice to restore the affected area:

I. Threat to water quality; or,

II. Threat to critical wildlife or plant habitat.

224:52-e Penalties.

I. Any person who violates any of the provisions of this subdivision shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.

II. Each 200 linear feet or fractions thereof of frontage on the affected stream, beaver flow, or pond or public road, or each acre or portion thereof on the affected lands above 2,700 feet from which trees are cut in excess of limits prescribed in this subdivision shall constitute a separate offense.

III. Any person in violation of the provisions of RSA 224:52-d shall be guilty of a separate offense for each subsequent 30-day period of refusal or neglect to restore the affected area to the prescribed standards.

2 Report Required. The director of the division of forests and lands shall make a report to the senate president and the speaker of the house on the proposed recodification of the existing forest practice laws on or before November 1, 1993.

3 Reference Change. Amend RSA 224:53, III to read as follows:

III. The cutting of timber, as required by RSA [224:44-a] ***224:52-b - 52-d;*** and

4 Repeal. RSA 224:44-a, relative to the cutting of timber, is repealed.

5 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill prohibits the cutting of timber near certain waters, public highways and above certain elevations in the state.

This bill authorizes the director of the division of forests and lands to order the restoration of any land affected by unsound forest practices.

This bill also requires the director of forests and lands to submit a report to the senate president and the speaker of the house on the proposed recodification of the forest practice laws on or before November 1, 1993.

SUBSTITUTE MOTION

Senator Pignatelli moved to substitute re-refer to committee for ought to pass with amendment.

SENATOR PIGNATELLI: This bill addresses the subject of clearcutting. While the committee believes that the state should take some action to regulate clearcutting, particularly around rivers and ponds, we need additional time to craft a law that encourages sound forestry practices that can be enforced. The Environment committee will continue to work with the Division of Forest and Lands, the Forest Society, the New Hampshire Timberland Owners Association to try and craft a compromise. We would appreciate your support for the referral motion.

SENATOR CURRIER: I just rise in support of the refer motion and commend Senator Pignatelli and others for recognizing the hard work of four members of the House and three members of the Senate in the clearcut study that went on this past summer. I urge the full Senates support of the substitute motion of refer to committee.

SENATOR MCLANE: Because this is my bill I would just like to briefly say that the state of New Hampshire is very fortunate that clearcutting is not enough of a problem to hurry through with some legislation. That we are lucky, unlike some of our neighboring states, and that we do have time to craft a bill which takes care of all the interest and also protects our forest for the future.

Adopted.

SB 128 is re-referred.

SB 140-FN-A, an act requiring the department of environmental services to design and propose a water use permit program for future implementation and making an appropriation therefor. Environment committee. Ought to Pass with Amendment. Senator Fraser for the committee.

1793B

Amendment to SB 140-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT

relative to the public water rights study committee.

Amend the bill by replacing all after the enacting clause with the following:

1 Date Extended. Amend the introductory paragraph of 1990, 148:2 as amended by 1991, 356:1 to read as follows:

To properly discharge its duty, the general court finds it desirable to establish a means to discern the extent and content of the public rights; to determine whether a present or proposed private use of a public water body impacts or may impact the public rights; and to establish under what conditions conveyance of some portion of the public rights would serve the public interest. To this end, the public water rights study committee established in section 4 of this act shall report its findings and recommendations to the senate president and the speaker of the house of representatives on or before [December 31, 1992] ***November 1, 1993***. The report shall address the following:

2 New Paragraphs; Additional Duties of the Public Water Rights Study Committee. Amend 1990, 148:2 as amended by 1991, 356:3 by inserting after paragraph IX the following new paragraphs:

X. The study committee shall work with the department of environmental services to design and propose to the legislature a water use per-

mit program for future implementation. The proposed water use permit program shall be administered by the department of environmental services. The department would be responsible for determining the size, responsibilities, and membership of an advisory and an appellate board.

XI. In developing the water use permit system the study committee and the department shall consider the following:

(a) The establishment of a river basin planning program.

(b) Standards for identifying protected instream flows.

(c) Annual use reporting.

(d) Contents of a permit application.

(e) Application processing guidelines and requirements.

(f) Issuance and duration of permits.

(g) Appeals process.

(h) Compliance and enforcement.

(i) Exemptions.

(j) Guidelines for water conservation and management of water shortages.

XII. The water use permit program shall incorporate the following regarding water withdrawals:

(a) Withdrawals below 20,000 gallons per day from a single source should be exempted.

(b) Grandfathering of uses registered with the department. The department shall consider the time period and the amount of use.

XIII. Any other issues the study committee determines are necessary to complete its duties.

3 Membership of Committee. The appointments for the membership of the study committee established in 1990, 148:4 as amended by 1991, 356:5 shall be extended to the new reporting date.

4 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill extends the reporting date of the public water rights study committee to November 1, 1993.

This bill also requires the committee to work with the department of environmental services to design and propose to the legislature a water use permit program for future implementation.

SUBSTITUTE MOTION

Senator Fraser moved to substitute re-refer to committee for ought to pass with amendment.

SENATOR FRASER: Mr. President, the committee members recognized that the sponsors of this bill had the best of intentions when they proposed this measure. The protection of New Hampshire waters is something in which we all have the best of interest; however, the members of the committee believe that passing this bill would be premature. It would be premature because more information and data and facts are needed to know how to proceed appropriately. We need the result of the River Basin planning and assessment study. Mr. President, I would urge that the Senate adopt my subsitute motion of re-refer.

Adopted.

SB 140 is re-referred.

Recess.

Out of recess.

SB 184-FN-A-LOCAL, an act imposing a surcharge on tipping fees at private solid waste landfills and continually appropriating a fund to the governor's office of energy and community services. Environment committee. Re-refer to committee. Senator Lamirande for the committee.

SENATOR LAMIRANDE: Members of the Senate, as many of you may know the highly successful municipal grant program and the Governors recycling program in the office of State Planning is scheduled to end at the end of the fiscal year. Many communities have benefited from the grant program to start up recycling programs, purchase equipment and develop markets for recycled products. Yet we still have a long way to go to meet our goal on recycling 40 percent of our solid waste by the year 2000. The Governor's budget does not include funds to continue the program in the office of State Planning. SB 184 is designed to provide a continuous funding source to promote recycling in New Hampshire. The bill would have added $1 per ton surcharge on solid waste that goes to prevent landfills, this would have resulted in approximately $1.3 million. The DES would have distributed to our cities and towns for capital expenditures and other recycling needs. About 400,000 of these funds will come from out-of-state. Unfortunately, the bill also would cost many cities and towns a lot of money. Nashua for example, would have to pay an extra $100,000 each year despite their very aggressive recycling program. As a result, the committee would like to re-refer the bill to see if we can work out a better way to fund the recycling. I would like to add that it is our hope that the recycling program is funded in the budget. The OSP program has been highly successful in helping our cities and towns with the solid waste crisis and it deserves to be renewed. Thank you.

Committee report of re-refer is adopted.

SB 191-FN, an act relative to the New Hampshire real estate practice act. Executive Departments & Administrations committee. Ought to Pass with Amendment. Senator Currier for the committee.

1811B

Amendment to SB 191-FN

Amend RSA 331-A:2 - 331-A:4 as inserted by section 1 of the bill by replacing them with the following:

331-A:2 Definitions. In this chapter:

I. "Advance fees" mean any fees charged for services including, without any limitation, any fees charged for listing, advertising, or offering for sale or lease any real property. Advance fees shall not include fees paid solely for advertisement in a newspaper or other publication of general circulation.

II. "Branch office" means a real estate broker's office other than the principal place of business.

III. "Broker" means any person acting for another on commission or for other compensation, for the promise of such commission or other compensation, or any person licensed under this chapter acting in the licensee's own behalf who:

(a) Sells, exchanges, purchases, rents, or leases real estate.

(b) Offers to sell, exchange, purchase, rent or lease real estate.

(c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate.

(d) Lists, offers, attempts or agrees to list real estate for sale, lease or exchange.

(e) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.

(f) Collects, offers, attempts or agrees to collect rent for the use of real estate.

(g) Advertises or holds oneself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate.

(h) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, lease, or rental of real estate.

(i) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate.

(j) Engages in the business of charging an advance fee in connection with any contract whereby the person undertakes to promote the sale or lease of real estate, through its listing in a publication or data base issued for such purpose, through referral of information concerning such real estate to brokers, or both.

(k) Performs any of the acts in subparagraphs (a)-(j) as an employee of or on behalf of the owner of or any person who has a real or equitable interest in, real estate for compensation.

IV. "Commission" means the New Hampshire real estate commission.

V. "Executive director" means the executive director of the New Hampshire real estate commission. VI. "Managing broker" means a broker who manages a branch office.

VII. "Person" means an individual, corporation, partnership or association, both foreign and domestic.

VIII. "Principal broker" means the individual broker, including the broker designated by a corporation, partnership or association, whom the New Hampshire real estate commission holds responsible for the actions of licensees who are assigned to such individual broker.

IX. "Real estate" means and includes leaseholds or any other interest or estate in land and business opportunities which involve any interest in real estate. It also includes the sale and resale of time share units and manufactured housing units, affixed to real estate.

X. "Salesperson" means an individual who is licensed under a broker to participate in any activity described in paragraph III of this section.

331-A:3 Prohibition. It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or real estate salesperson without a license and otherwise complying with the provisions of this chapter.

331-A:4 Exempted Classes. The provisions of this chapter shall not apply to an owner, builder or tenant of real estate or to his regular employees with respect to property owned or leased by him, or to a prospective purchaser or tenant of real estate or to his regular employees with respect to property sought to be acquired or leased by him, or to an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction, or to an attorney at law in the performance of his duties as an attorney, or to an auctioneer selling at public auction, or to a public official in the conduct of his official duties, or to a person or his regular employees while such person is acting as a receiver, trustee, administrator, executor, conservator, guardian, or fiduciary, or while acting under court order, or while acting under the authority of a will, trust instrument, or other recorded instrument containing a power of sale, or to any person owning or operating a park, including his regular employees, in which manufactured housing to be sold or leased is located may, for a fee or commission or other valuable consideration, list, sell, purchase, exchange or lease such manufactured housing without a license of a broker or salesman.

Amend RSA 331-A:10, V as inserted by section 1 of the bill by replacing it with the following:

V. For an individual broker license including a principal broker or a managing broker, but excluding a corporation, partnership, or association, files a surety bond with the commission in a sum of not less than $25,000 which shall be held in accordance with RSA 331-A:13.

Amend RSA 331-A:14 as inserted by section 1 of the bill by replacing it with the following:

331-A:14 Bonds. No broker's license shall be issued or renewed until the applicant gives to the commission a surety bond in the form approved by the commission in a sum of not less than $25,000, executed by the applicant and by a surety company authorized to do business in this state. The bond shall be payable to the state of New Hampshire, for the benefit of any person aggrieved, and shall be conditioned upon the faithful accounting by the broker for all funds entrusted to the broker in the broker's capacity as a licensed principal or managing real estate broker. Any person so aggrieved may bring suit on the bond in the person's own name; provided that the aggregate liability of the surety to all persons shall, in no event, exceed the sum of such bond. The commission may revoke the license of any broker whenever the bond filed by the broker ceases to be in full force and effect.

Amend RSA 331-A:15, III and IV as inserted by section 1 of the bill by replacing them with the following:

III. Licenses shall be issued in the form of a certificate for wall display and a card to be carried on the person. Each licensed broker shall prominently display at the place of business the broker's certificate and those of all licensed salespersons associated with or under contract to the broker.

IV. In the case of a branch office, the license of each broker and salesperson shall be delivered or mailed to the managing broker and be kept in the custody and control of the managing broker.

Amend RSA 331-A:16, III as inserted by section 1 of the bill by replacing it with the following:

III. All members and officers of a corporation, partnership or association, who actively participate in the business of real estate brokerage, shall possess an active broker's or salesperson's license.

Amend RSA 331-A:17, IV-VII as inserted by section 1 of the bill by replacing them with the following:

IV. The license of a real estate salesperson shall be retained at all times by the broker and when any real estate salesperson ceases to represent the broker, the salesperson's license shall cease to be in force. The broker shall notify the commission in writing of the termination. Such notice shall be accompanied by the salesperson's license. Failure of any broker to notify the commission of such salesperson's termination within 10 days after demand by the salesperson shall be grounds to discipline the broker.

V. The commission shall issue a new license for the unexpired term to a formerly unemployed salesperson, if the person meets all requirements of licensure, upon receipt of a statement from a broker, together with the appropriate fee, that such salesperson has entered the broker's employ.

VI. The license of an unemployed salesperson shall lapse unless the person obtains employment by a broker within a period of one year after becoming unemployed.

VII. When a salesperson's services are terminated by the broker for a violation of any of the provisions of this chapter, a written statement of the facts shall be submitted immediately to the commission by the broker.

Amend RSA 331-A:18 as inserted by section 1 of the bill by replacing it with the following:

331-A:18 Lapse of License. If any licensee under this chapter permits the biennial license to expire, the license shall be deemed to have lapsed; and such person may obtain a license only by qualifying anew as an original licensee. A licensee may, however, renew the license up to 6 months after its expiration by complying with the requirements of RSA 331-A:19 and by submitting the required late fee. If a license lapses as a result of a person being ordered to active duty with the armed forces, the 6-month time period for complying with the requirement of RSA 331-A:19 shall begin upon the licensee's date of discharge from active duty, and the late fee shall be waived. During the lapsed period between the expiration date and the date of renewal of the license the rights of the licensee under such lapsed license shall be terminated. It shall be unlawful to act or attempt or offer to act in any matter as a real estate broker or salesperson under a lapsed license.

Amend RSA 331-A:22 and 331-A:23 by replacing them with the following:

331-A:22 Nonresidents. A nonresident of this state may become a real estate broker or salesperson in this state by conforming to all of the conditions of this chapter applicable to residents of this state. Upon making application, such nonresidents shall file an irrevocable consent and power providing that legal actions may be commenced against them in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside by service of process or pleading authorized by the laws of this state on a member of the commission or its executive director, the consent or power stipulating that such service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident in this state.

331-A:23 Denial of Reciprocity. No nonresident whose license as a broker or salesperson is under revocation or suspension in another state shall be granted a license as a broker or salesperson in this state; and, if already granted a nonresident license, it may be revoked or suspended as provided under this chapter upon proof of the other state's action.

Amend RSA 331-A:25, I as inserted by section 1 of the bill by replacing it with the following:

I. Conduct of licensed brokers and salespeople.

Amend RSA 331-A:25, IV as inserted by section 1 of the bill by replacing it with the following:

IV. Fees for examinations, continuing education courses, licenses, late renewal penalty, educational course evaluations, administrative costs, transcripts, dishonored checks, and any other fees required under this chapter.

Amend RSA 331-A:26 as inserted by section 1 of the bill by replacing it with the following:

331-A:26 Prohibited Conduct. The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

I. Obtaining a license by means of fraud, misrepresentation or concealment.

II. Violating any of the provisions of this chapter, or any rules adopted or order issued pursuant to this chapter.

III. Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money

under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses; provided that, for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended.

IV. Making, printing, publishing, distributing, or causing, authorizing or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or licensee's principal, and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known of the falsity of the statements, descriptions or promises.

V. Knowingly committing, or being a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device, whereby any other person relies upon the word, representation or conduct of the licensee.

VI. Accepting the services of, or continuing in a representative capacity, any salesperson who has not been granted a license, or after the license has been revoked or suspended.

VII. Conversion of any money, contract, deed, note, mortgage, abstract or other evidence of title, to the licensee's own use, to the use of licensee's principal, or of any other person, when delivered to the licensee in trust or on condition, in violation of the trust or before the happening of the condition. Failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within 30 days after the owner is entitled to and makes demand for such evidence, shall be prima facie evidence of such conversion.

VIII. Failing to promptly place trust funds in a proper trust account, or failing to reconcile records monthly.

IX. Failing, upon demand, to disclose any information within the licensee's knowledge, or to produce any document, book or record in the licensee's possession for inspection of and copying by the commission or its authorized representatives acting under authority of law.
in any hearing conducted under this chapter.

X. Advertising in any manner without stating the broker's name as licensed, and in the case of a salesperson, without stating the name of the broker as licensed for whom or under whom the salesperson operates.

XI. Accepting other than cash or its equivalent as earnest money, unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the earnest money receipt.

XII. Acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom the licensee acts, and without first making full disclosure of all the facts to all parties interested in the transaction.

XIII. Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal.

XIV. Accepting employment or compensation for comparative market analysis of real property contingent upon reporting a predetermined value.

XV. Issuing a comparative market analysis on any real property in which the broker or salesperson has an interest, unless such interest is clearly stated in the compatative market analysis report.

XVI. Misrepresentation of membership in any state or national real estate association.

XVII. Discrimination against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or violating any of the provisions of any state or federal antidiscrimination law. A certified copy of the final holding of any court of competent jurisdiction in such matter, or a certified copy of the order issued by any state or federal administrative agency having jurisdiction in such matter, shall be conclusive evidence in any hearing conducted under this chapter.

XVIII. Failing to keep for a period of 3 years, records of escrow and trust accounts pertaining to funds entrusted with the licensee relating to a real estate transaction showing date deposited, date of withdrawal, to whom paid, and such other pertinent information as the commission may require. Such records shall be available to the commission, or its representatives, on demand from the licensee.

XIX. Failing to preserve for 3 years following its consummation, records relating to any real estate transaction.

XX. Acceptance by a salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom the salesperson is licensed.

XXI. Directing any transaction involving licensee's principal to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate without disclosing such expectation to the licensee's principal.

XXII. Failing to disclose to an owner, the licensee's intention or true position if the licensee directly, or indirectly through a third party, purchases for such licensee, or acquires or intends to acquire any interest in or any option to purchase the property.

XXIII. Acting as a salesperson with a licensed broker while not licensed, representing or attempting to represent a broker other than the broker with whom the licensee is affiliated, representing oneself as a salesperson or having a contractual relationship similar to that of salesperson with other than a licensed broker.

XXIV. Paying or offering to pay valuable consideration, as defined by the commission, to any person not licensed under this chapter or not a member of an exempted class under RSA 331-A, except that valuable consideration may be shared with a licensed broker of another jurisdiction who is doing business regularly and legally within that broker's own jurisdiction.

XXV. Failing to voluntarily furnish copies of all documents to all parties executing the documents.

XXVI. Advertising the availability of real estate or the services of a licensee in a false, misleading or deceptive manner.

XXVII. In the case of a broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of licensees and any unlicensed staff.

XXVIII. Breaching a fiduciary duty owed by a licensee to the principal in a real estate transaction.

XXIX. Unprofessional conduct defined by statute or rule.

XXX. Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of the real property.

XXXI. Offering real estate for sale or lease without the knowledge and written consent of the owner or owner's authorized agent, or on terms other than those authorized by the owner or owner's authorized agent.

XXXII. Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting a new contract with another principal.

XXXIII. Representing to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

XXXIV. Lending a broker's license to any person including a salesperson, or permitting a salesperson to operate as a broker.

XXXV. Failure to produce any document, book or record, in the licensee's possession or under the licensee's control, concerning any real estate transaction under investigation by the commission for inspection and copying.

XXXVI. Demonstrating untrustworthiness or incompetency to act as a broker or salesperson.

Amend the introductory paragraph of RSA 331-A:28, I as inserted by section 1 of the bill by replacing it with the following:

I. The commission may investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or real estate salesperson, regardless of whether the transaction was for the person's own account or in the capacity as broker or salesperson. If found guilty, after a hearing, of violating this chapter, the commission may impose any one or more of the following sanctions:

Amend RSA 331-A:28, III as inserted by section 1 of the bill by replacing it with the following:

III. The action of the commission in revoking, suspending or denying a license or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee within 30 days after the filing of the commission's decision. An appeal shall suspend the commission's decision. The record of the hearing of the action of the commission shall be presented to the superior court for review and the superior court shall give the review under this chapter priority on the court calendar. The superior court may confirm, reverse or modify the commission's decision, or order a trial de novo without a jury as justice may require.

Amend RSA 331-A:29 as inserted by section 1 of the bill by replacing it with the following:

331-A:29 Investigation Procedures. In addition to the requirements of RSA 541-A and other specific statutes, the commission shall comply with the following procedures when investigating complaints against licensees:

I. Upon receipt of a complaint, the executive director or his designee shall be responsible for investigation of the complaint. Upon completion of the investigation the investigator shall present the complaint file to a commission member who shall evaluate the complaint. Such commission member may direct the executive director to meet with the complainant and the licensee to attempt to reconcile their differences.

II. The results of the evaluation shall be presented to the commission by the evaluating member.

III. Based on the results of this evaluation, the evaluating commission member shall make a written recommendation to the commission regarding whether a hearing should be held to consider disciplinary action against a licensee.

IV. If the evaluating commission member recommends that a hearing be held, the commission shall schedule such a hearing as required by RSA 331-A:33. The commission may, regardless of the recommendation of the evaluating committee member, elect to hold a hearing on any complaint.

V. Disciplinary hearings shall be heard by a hearing panel consisting of at least 3 commission members. The hearing panel shall not include the member responsible for evaluating the complaint in question.

Amend RSA 331-A:32 as inserted by section 1 of the bill by replacing it with the following:

331-A:32 Civil Actions.

I. No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered as a broker or salesperson under this chapter, unless such person was duly licensed under this chapter as a broker or salesperson at the time of offering to perform any such act or service, or procuring any promise to contract for the payment of compensation for any such contemplated act or service.

II. No salesperson may sue in such person's own capacity for the recovery of a fee, commission or compensation for services as a salesperson unless the action is against the broker with whom the person is licensed or was licensed with at the time the act or service was performed.

Amend RSA 331-A:34 as inserted by section 1 of the bill by replacing it with the following:

331-A:34 Penalty. Any person acting as a real estate broker or real estate salesperson, without a license or violating any of the provisions of this chapter, shall be guilty of a misdemeanor.

SENATOR CURRIER: The committee amendment is on page 32 of the calendar. Basically what this bill does is that it recodifies all of the statutes relative to the real estate practice act. There were a number of discussions about bonding and about exempted classes and so forth that were discussed and obviously amended in and out of the bill during the process of the hearings, and the subcommittee worked down to the last hour yesterday prior to noontime so that we could get this bill before you without holding it up to a re-referral, by working out some of the differences in regard to terminology and classes of brokerages and so on and so forth. It is a pretty comprehensive consolidation of the various statutes, it is pretty self-explanatory, I think, if you understand real estate. I think one of the biggest changes that the committee made yesterday was to go back to the original terminology in regard to those exempted classes. Unfortunately, what happened during the process is that certain classes were changed from exemption, they kept bouncing back. Those groups came to the Executive Department's and Administration committee indicating some concern about some of the changes that were being made. What we ultimately decided to do in the committee was to bring it back to the original language including 331-A:10 which is the exemption for manufactured park homeowners as an exemption so that they can in fact sell homes without a real estate license. Everything else is pretty self explanatory. Thank you, Mr. President.

Amendment adopted.

Ordered to third reading.

SB 53, an act relative to third party administrators. Insurance committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

1791B

Amendment to SB 53

Amend the introductory paragraph of RSA 402-H:1, I as inserted by section 1 of the bill by replacing it with the following:

I. "Administrator" or "third party administrator" or "TPA" means a person who directly or indirectly solicits or effects coverage of, under-

writes, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with life or health insurance coverage or annuities or workers' compensation insurance, except any of the following:

Amend RSA 402-H:1, I(c) and (d) as inserted by section 1 of the bill by replacing it with the following:

(c) An insurer which is authorized to transact insurance in this state, or a subsidiary or affiliated corporation of such insurer, with respect to a policy lawfully issued and delivered in and pursuant to the laws of this state.

(d) An agent or broker licensed to sell life or health insurance or annuities or workers' compensation insurance in this state, acting on behalf of an authorized insurer.

Amend RSA 402-H:1, VI as inserted by section 1 of the bill by replacing it with the following:

VI. "Insurer" means any person undertaking to provide life or health insurance coverage or annuities or worker's compensation insurance in this state. For the purposes of this chapter, "insurer" includes a licensed insurance company, a prepaid hospital or medical care plan, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of insurance subject to state insurance regulation. "Insurer" does not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974.

Amend RSA 402-H:7, IV as inserted by section 1 of the bill by replacing it with the following:

IV. All claims paid by the administrator from funds collected on behalf of or for an insurer shall be paid either on drafts or checks of and as authorized by the insurer or on drafts or checks of the administrator and authorized by the insurer as long as the draft or check clearly indicates that payment is on the behalf of the insurer.

Amend RSA 402-H:16 as inserted by section 1 of the bill by replacing it with the following:

402-H:16 Penalties. An administrator who violates or fails to comply with the provision of this chapter or rules adopted pursuant to this chapter shall be subject to suspension or revocation of its certificate of authority and an administrative penalty not to exceed $2,500 for each violation.

SENATOR BLAISDELL: Mr. President and members of the Senate, this bill was recommended by the Insurance Department. It is a model bill coming out of the NAIC, which is the National Association of Insurance Commissioners. The amendment on page 37 just defines what a third party administrator is. There was no opposition to the bill. We offer ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 55, an act relative to accident and health insurance and health maintenance organizations. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to ask your support of ought to pass on SB 55. This bill was requested by the Insurance Department. It corrects the areas of accident and health insurance and it also brings HMO's in line under the same regulations that other insurance companies have to follow. There was no opposition to the bill, we would ask ought to pass.

Adopted.

Ordered to third reading.

SB 62, an act relative to failure to support a child, spouse or other dependent. Judiciary committee. Ought to Pass with Amendment. Senator Podles for the committee.

1796B

Amendment to SB 62

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a committee to study child support issues.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established; Membership. There is established a committee to study child support issues. The committee shall consist of the following members:

I. The governor, or a designee.

II. Two members of the senate, appointed by the president of the senate.

III. Two members of the house of representatives, appointed by the speaker of the house.

IV. The administrator of the office for child support enforcement services, or a designee.

V. The commissioner of the department of health and human services, or a designee.

VI. One public member representing the interests of custodial parents, appointed by the governor.

VII. One public member representing the interests of non-custodial parents, appointed by the governor.

VIII. One marital master, appointed by the chief justice of the superior court.

IX. The chief justice of the superior court, or a designee.

2 Duties of the Committee. The duties of the committee shall include, but not be limited to:

I. Reviewing the provisions of RSA 458-C, the child support guidelines, including RSA 458-C:5 addressing special circumstances warranting adjustments to the application of the guidelines, to determine their effectiveness and fairness.

II. Reviewing RSA 639:3, I and RSA 639:4, regarding criminal sanctions for non-support, to determine their effectiveness and fairness.

III. Studying the impact of the costs of providing medical insurance for the non-custodial parent and as part of a child support order.

IV. Studying federal and other states' child support guidelines, statutes, and legislation with a view toward improving New Hampshire's child support formula.

V. Studying split and shared custody arrangements with a view toward making recommendations for changes to the child support guidelines formula.

VI. Holding 4 public hearings at separate geographic locations around the state for the purpose of obtaining testimony from the public on child support issues.

VII. Studying the relationships between visitation, custody, and child support.

VIII. Making recommendations for any proposed legislation that the committee deems necessary.

3 Appointments; Mileage. Appointments of all members of the committee shall be made within 30 days of the effective date of this act. The members of this committee shall serve without compensation, except that members appointed from the legislature shall receive compensation for mileage at the usual legislative rate.

4 Officers; Meetings. The first meeting of this committee shall be called within 60 days after the effective date of this act by the governor or designee under paragraph I. At the first committee meeting, the members shall choose a chairperson and a vice chairperson by majority vote from among the membership. After the first meeting, all committee meetings shall be called by the chairperson. Meeting dates and places shall be set at the discretion of the committee.

5 Reports. The committee shall submit a report of its findings and recommendations on or before September 1, 1994 to the speaker of the house, the president of the senate, and the governor.

6 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a committee to study issues relating to child support orders and enforcement, to gain public input regarding those issues, and to make recommendations for proposed legislation.

SENATOR PODLES: Mr. President, the amendment to SB 62 which is on page 38 is now the bill. It establishes a committee to study issues relating to child support orders and enforcement and to gain public input regarding those issues and to make recommendations for a proposal of legislation. The committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 63, an act relative to impoundment of motor vehicles in which an act of prostitution has occurred. Judiciary committee. Re-refer to committee. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee would like to ask re-refer on SB 63. We believe that there is a major problem that some of our major cities are having with prostitution. Our hope is that we can do some serious work over the summer and try to find some solutions that will help correct that problem. Much of the testimony from the people who truly believe that the problem exist with drugs. It is a major order for us, but we are committed to try and help those communities. We ask re-refer.

Committee report of re-refer is adopted.

SB 79, an act also known as the "Kimberly Goss Act", limiting persons arrested for a violent offense while on parole or probation for a similar offense from receiving bail. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

1800B

Amendment to SB 79

Amend RSA 597:1, II as inserted by section 1 of the bill by replacing it with the following:

II. If such person has been previously convicted of a violent crime as listed in RSA 651:4-a or any other statute prohibiting the same conduct under federal or state law, is under probation or parole for such offense, and has been arrested for a crime in violation of RSA 630, RSA 631 or RSA 632-A:2-4 or RSA 633:1-3, the person arrested shall be detained without bail pending a bail hearing before the court. At such hearing the arresting agency shall present, and the court shall consider, all relevant records or other documentation concerning the arrested person's parole or probation, as well as the offense for which the person is on parole or probation. If the court finds that the proof is evident or the presumption is great, there shall be a rebuttable presumption that personal recognizance bail is inadequate. Said hearing shall be held as soon after arraignment as possible but in no event later than 72 hours after arraignment.

Amend RSA 597:2, V(c) as inserted by section 2 of the bill by replacing it with the following:

(c) Probation or parole for any offense under federal or state law, ***except as provided in RSA 597:1*** may be detained for a period of not more than 72 hours from the time of his arrest, excluding Saturdays, Sundays and holidays, and the law enforcement agency making the arrest shall notify the appropriate court, probation or parole official, or federal, state or local law enforcement official. ***Upon such notice the court shall also direct the clerk to, notify by telephone the division of field services, department of corrections of the pending bail hearing.*** If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the provisions of law governing release pending trial. Probationers and parolees who are arrested and fail to advise their supervisory probation officer or parole officer in accordance with the conditions of probations and parole may be subject to arrest and detention as probation and parole violators.

SENATOR COLANTUONO: At the hearing some questions were raised concerning the proper drafting of the bill. We had a subcommittee look at the bill together with Mike Brown from probation and parole and Bill Lyons from the Attorney General's Office, together with Matt Epstein from the Bar Association. They assisted us in re-drafting the bill to take care of any constitutional concerns that there might be. As a result, the amendment on page 39 is an adequate solution to plugging up the loophole that lead to the unfortunate murder of Kimberly Goss. We would recommend ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 112, an act prohibiting a defendant in a sexual assault case from bringing certain civil actions against the victim. Judiciary committee. Ought to Pass with Amendment. Senator Cohen for the committee.

1801B

Amendment to SB 112

Amend RSA 632-A:10-b, I and the introductory paragraph to paragraph II as inserted by section 1 of the bill by replacing it with the following:

I. In this section "victim" means a person alleging to have been subjected to aggravated felonious sexual assault as defined in RSA 632-A:2, felonious sexual assault, as defined in RSA 632-A:3 or sexual assault as defined in RSA 632-A:4. The term "victim" shall include the parent, guardian, or custodian of such person if the person is less than 18 years of age or if the person is mentally incapable of meaningfully understanding or participating in the legal process.

II. A defendant in an aggravated felonious sexual assault, felonious sexual assault or a sexual assault case shall not commence or maintain a civil action against a victim of the crime for which the defendant is charged if both of the following circumstances exist:

Amend RSA 632-A:10-b, V as inserted by section 1 of the bill by replacing it with the following:

V. This section shall not apply:

(a) If the victim files a civil action based upon an incident from which the criminal action is derived against the defendant in the criminal or disciplinary action; or

(b) The court determines that there are reasonable grounds to believe that the delay would be prejudicial.

SENATOR COHEN: SB 112 would prohibit a defendant from bringing a civil suit against the victim of a sexual assault until after the criminal charges have been discharged. There is a possibility that the defendant in a sexual assault case could threaten the civil suit against the victim in order to intimidate the woman into dropping the charges or use the civil proceedings to discover more about the evidence being used in the criminal proceedings. While there are protections under current law for staying civil actions, the committee was informed that in several recent cases the threat and/or the filing of civil actions against the victim have resulted in charges not being brought forward. The amendment clarifies some of the language of the bill as well as allowing for the civil action to go forward if the defendant can prove that delaying the action would be detrimental to the case. The committee asks that the bill be passed as amended.

SENATOR COLANTUONO: I voted in committee for this bill, reluctantly, and I want to state my reasons and my concerns. This bill sets a dangerous precedent in that it takes away the civil rights of a person who is accused of a crime before they have been convicted of anything, it takes away their right to maintain a civil action against an accuser who may or may not be telling the truth about the accusations. It is the only area in which I know that that is done, singling out these particular types of accused persons. I am concerned that it does away with the person's presumption of innocence under the law and I am concerned that it would violate the New Hampshire constitutional provision that grants all parties the right to free and complete and prompt remedies in civil actions. I understand the motivation of why it is passed and I understand that if the accused person is in fact guilty, it makes a lot of sense. If the accused person is in fact not guilty, as happens unfortunately too often in these types of cases, it really makes no sense at all and is abrogation of their civil rights.

Amendment adopted.

Division has been requested.

Division has been withdrawn.

Senator Currier moved to have SB 112 an act prohibiting a defendant in a sexual assault case from bringing certain civil actions against the victim, laid on the table.

Adopted.

LAID ON THE TABLE

SB 112, an act prohibiting a defendant in a sexual assault case from bringing certain civil actions against the victim.

SB 116, an act relative to reporting of treatment or assistance given to victims of domestic abuse. Judiciary committee. Ought to Pass with Amendment. Senator Baldizar for the committee.

1802B

Amendment to SB 116

Amend the title of the bill by replacing it with the following:

AN ACT

relative to reporting of treatment or assistance given to victims of domestic abuse and requiring physicians and hospitals to use domestic violence protocol as adopted by the department of justice.

Amend the bill by inserting after section 1 the following and renumbering sections 2 and 3 to read as 3 and 4, respectively:

2 Standardized Domestic Violence Protocol. Amend RSA 21-M:8-d to read as follows:

21-M:8-d Standardized Rape Protocol and Kit ***and Domestic Violence Protocol and Kit.*** The department of justice shall adopt, pursuant to RSA 541-A, and implement rules establishing a standardized rape protocol and kit ***and a domestic violence protocol and kit*** to be used by all physicians or hospitals in this state when providing physical examinations of victims of alleged sexual offenses ***and alleged domestic abuse, as defined in RSA 173-B:1.***

AMENDED ANALYSIS

This bill exempts persons treating certain domestic violence victims from reporting requirements.

This bill repeals the requirement that a law enforcement report form shall be given to certain victims for completion.

This bill requires the department of justice to adopt a domestic violence protocol and kit to be used by physicians and hospitals.

SENATOR BALDIZAR: TAPE INAUDIBLE.

Amendment adopted.

Ordered to third reading.

SB 217-FN, an act clarifying the laws relative to guardianship and expanding a guardian's powers. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1797B

Amendment to SB 217

Amend RSA 464-A:25, I((a)(1) as inserted by section 8 of the bill by replacing it with the following:

(1) A guardian may admit a ward to a state institution with prior approval of the probate court if, following notice and hearing, the court finds beyond a reasonable doubt that the placement is in the ward's best

interest and is the least restrictive placement available. Authorization for such admission shall not be time limited unless the court so orders. Authority to admit a ward to a state institution with prior approval under this subparagraph shall not be subject to the limitations contained in RSA 464-A:25, I(a)(2) through (4).

Amend RSA 464-A:25, I(a)(4) as inserted by section 8 of the bill by replacing it with the following:

(4) At any time, the ward or counsel for the ward may request a hearing on the admission to a state institution without prior approval of the probate court, at which the guardian shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best interest and is the least restrictive placement available. The hearing shall be held within 15 days, excluding Saturdays, Sundays and legal holidays, from the date that the hearing is requested.

SENATOR HOLLINGWORTH: TAPE INAUDIBLE.

Amendment adopted.

Ordered to third reading.

SB 214-FN-LOCAL, an act requiring municipalities to give notice to property taxpayers of their right to seek tax abatements, tax exemptions and other forms of tax relief; and relative to appraisals for property tax purposes and establishing a study committee on property valuation. Public Affairs committee. Re-refer to committee. Senator Roberge for the committee.

SENATOR ROBERGE: TAPE INAUDIBLE.

Committee report of re-refer is adopted

HB 336, an act relative to voter registration in cities. Public Affairs committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: TAPE INAUDIBLE.

Adopted.

Ordered to third reading.

HB 187-FN, an act authorizing the division of public health services to charge fees for copies of data or statistical information. Public Institutions, Health & Human Services committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: TAPE INAUDIBLE.

Adopted.

Ordered to third reading.

SB 210-FN, an act relative to the division for children and youth services confidentiality statutes. Public Institutions, Health & Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

1810B

Amendment to SB 210-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose; Intent. It is the intent of the general court, through the amendment of RSA 170-G:8-a, to provide access to the records of the divi-

sion for children and youth services in a manner which promotes the goal of the protection, care, treatment, counseling, and appropriate supervision of children, and to preserve the unity of the family whenever possible, while respecting the rights of the child and the child's parents to privacy.

2 Case Records; Court Records. RSA 169-B:35 is repealed and reenacted to read as follows:

169-B:35 Juvenile Case and Court Records.

I. All case records, as defined in RSA 170-G:8-a, relative to delinquency, shall be confidential and access shall be provided pursuant to RSA 170-G:8-a.

II. Court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by officers of the institution where the minor is committed, juvenile services officers, parent, guardian, custodian, minor's attorney and others entrusted with the corrective treatment of the minor. Additional access to court records may be granted by court order or upon the written consent of the minor. Once a delinquent reaches 19 years of age, all court records and individual institutional records, including police records, shall be sealed and placed in an inactive file.

3 Disclosure Constitutes Violation; Access Limited. RSA 169-B:36 is repealed and reenacted to read as follows:

169-B:36 Penalty for Disclosure of Juvenile Records. It shall be unlawful for any person to disclose court records or any part thereof to persons other than those persons entitled to access under RSA 169-B:35, except by court order. Any person who knowingly violates this provision shall be guilty of a misdemeanor. This prohibition shall not be construed to prevent publication as provided in RSA 169-B:37.

4 Disclosure Constitutes Violation; Access Limited. RSA 169-C:25, II and III are repealed and reenacted to read as follows:

II. It shall be unlawful for any party present during a child abuse or neglect hearing to disclose any information concerning the hearing without the prior permission of the court. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

III. All case records, as defined in RSA 170-G:8-a, relative to abuse and neglect, shall be confidential, and access shall be provided pursuant to RSA 170-G:8-a.

5 Central Registry; Notice. Amend RSA 169-C:35 to read as follows:

169-C:35 Central Registry. There shall be established a state registry of abuse and neglect reports made pursuant to this chapter at the bureau for the purpose of maintaining a record of information on each case of alleged abuse or neglect reported. The registry shall be confidential and subject to the rules on access established by the director of the division under RSA 541-A. ***Upon receipt by the division of a written request and verified proof of identity, an individual shall be informed by the division whether that individual's name is listed in the founded reports maintained in the central registry.*** Founded reports shall be retained for 7 years. Unfounded reports shall be retained for 3 years.

6 Case Records; Court Records; Access Limited. RSA 169-D:25 is repealed and reenacted to read as follows:

169-D:25 Case and Court Records.

I. All case records, defined in RSA 170-G:8-a, relative to children in need of services, shall be confidential and access shall be provided pursuant to RSA 170-G:8-a.

II. The court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by juvenile service officers, parent, guardian, custodian, minor's attorney and others entrusted with the supervision of the child. Additional access to case records or court records may be granted by court order or upon the written consent of the minor. Once child in need of services reaches 18 years of age, all court and police records shall be destroyed.

7 Disclosure Constitutes Violation. RSA 169-D:26 is repealed and reenacted to read as follows:

169-D:26 Penalty for Disclosure of Records. It shall be unlawful for any person to disclose court records, or any part thereof, to persons other than those entitled to access under RSA 169-D:25, except by court order. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

8 Record Content; Confidentiality; Rulemaking. RSA 170-G:8-a is repealed and reenacted to read as follows:

170-G:8-a Record Content; Confidentiality; Rulemaking.

I. The case records of the division consist of all official records, regardless of the media upon which they are retained, created by the division for children and youth services in connection with an investigation conducted pursuant to RSA 169-C:24, or cases brought under RSA 169-B, 169-C, 169-D, or 463, or services provided to the child or family without a court order pursuant to RSA 170-G:4, including intake and assessment reports, service or case plans, case logs, termination reports and a list of persons or entities providing reports to the division or services to child or family. Such records do not include:

(a) Records created as part of an action brought pursuant to RSA 170-B or 170-C.

(b) Records submitted to or maintained by the courts, or records created by third parties, such as psychologists, physicians, and police officers, even if such records are prepared or furnished at the request of the division.

(c) Reports contained in the central registry of abuse and neglect reports maintained pursuant to RSA 169-C:35.

(d) The name of a person who makes a report of suspected abuse or neglect of a child pursuant to RSA 169-C:29, or any information which would identify the reporter.

II. The case records of the division shall be confidential. The division shall disclose the contents of case records to the following persons unless, in the opinion of the director or deputy director, such disclosure would be harmful to the child named in the case record:

(a) The child named in the case record.

(b) The parent of the child named in the case record, as defined in RSA 169-C:3, XXI.

(c) The guardian or custodian of the child named in the case record.

(d) Another member of the family of the child named in the case record, if disclosure is necessary for the provision of services to the child or other family member.

(e) If disclosure is necessary for the evaluation, provision of services, treatment, or supervision of the child named in the case record or of the family to:

(1) A person or entity requested by the division or ordered by the court to perform an evaluation or assessment on or to create a service plan for the child named in the case record, the child's family, or an individual member of the child's family.

(2) A person or entity requested by the division or ordered by the court to provide services to the child named in the case record or the child's family.

(3) The superintendent of schools for the school district in which the child named in the case record is then, or will according the child's case plan, be attending school.

(4) The person or entity with whom the child resides, if that person is not the child's parent, guardian, or custodian.

(f) Employees of the division and legal counsel representing employees of the division, for the purpose of carrying out their official functions.

(g) Persons made parties to judicial proceedings in New Hampshire relative to the child or family, whether civil or criminal, including the court with jurisdiction over the proceeding, any attorney for any party, and any guardian ad litem appointed in the proceeding.

(h) A grand jury, upon its determination that access to such records is necessary in the conduct of its official business.

III. The director shall adopt rules, pursuant to RSA 541-A, governing the procedures regulating access to all of the records of the division. Such rules shall contain provisions relative to:

(a) Access to case records by persons named in paragraph II of this section, together with a procedure for administrative review of any decision of the director or the deputy director to deny access to such records to any such person.

(b) Access to case records by a physician who has examined a child who the physician reasonably suspects may be abused or neglected.

(c) Access to case records by a police officer or juvenile services officer who has seen a child who the officer reasonably suspects may be abused or neglected, and such officer requires the information in order to determine whether to place the child in protective custody.

(d) Access to case records by a state official who is responsible for the provision of services to children and families, or a legislative official who has been statutorily granted specific responsibility for oversight of enabling or appropriating legislation related to the provision of services to children and families, for the purposes of carrying out their official functions, provided that no information identifying the subject of the record shall be disclosed unless such information is essential to the performance of the official function, and each person identified in the record or the person's authorized representative has authorized such disclosure in writing.

(e) Access to case records by a person conducting a bona fide research or evaluation project, provided that no information identifying the subject of the record shall be disclosed unless such information is essential to the purpose of the research, each person identified in the record or an authorized representative has authorized such disclosure in writing, and the division has granted its approval in writing.

(f) Access to case records by any person making a report of suspected child abuse or neglect pursuant to RSA 169-C:29, provided that such disclosure is limited to information about the status of the report under investigation, or information reasonably required to protect the safety of such person.

(g) Access to all other records of the division which are not case records as defined in paragraph II.

IV. Additional access to case records may be granted pursuant to the terms of an order issued by a court of competent jurisdiction.

V. It shall be unlawful for any person entrusted with information from case records to disclose such records or information contained in

them, except to persons providing legal counsel to the child or family. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

VI. Notwithstanding the foregoing:

(a) Any person who is entitled to access a case record pursuant to this section may share such information with any other person entitled to access pursuant to this section, unless the director or a designee shall specifically prohibit such additional disclosure in order to prevent harm to a child.

(b) Nothing in this section shall be construed to require access to any records in violation of the order of a court of competent jurisdiction.

(c) Nothing in this section shall be construed to prohibit the director or the commissioner of the department of health and human services from disclosing information from case records if:

(1) The disclosure is in response to information disclosed by a person other than a representative of the division;

(2) The disclosure is in the best interest of the child named in the case record; and

(3) Consent to the disclosure has been obtained from the child's parent or guardian.

9 Court Records; Guardians of Minors. RSA 463:7-a, II is repealed and reenacted to read as follows:

II. The court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection, but shall be open to inspection by those person who have access to case records pursuant to RSA 463:7-a, III.

10 New Paragraph; Case Records. Amend RSA 463:7-a by inserting after paragraph II the following new paragraph:

III. All case records, as defined in RSA 170-G:8-a, relating to a petition for the appointment of a guardian, shall be confidential and access shall be provided pursuant to RSA 170-G:8-a.

11 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

The statutes relating to the confidentiality of the division for children and youth services records are revised. They specify the types of information which constitute the record, those persons entitled to access such records, and the criteria and procedures for obtaining DCYS record information. Court records and DCYS case records are distinguished.

This legislation has been requested by the division for children and youth services.

SENATOR MCLANE: This was the toughest bill of the session. I am very, very proud of the results. At the risk of embarrassing a very hard working and lovely lady, I am going to point out that Lori Lutz, the head of the division, is standing up in the corner. We hope to get her out of the corner and that is why we have done this bill. All that I can say is here is a person that has worked harder than any public servant that I have ever known to try and accommodate a very vocal and at times, very unpleasant minority. You have seen their cars, you've seen the hearings, and it has not been easy on many of us. The trouble is that they believe that they have a legitimate gripe and Lori Lutz has listened to them. The bill that you have before you is better than the present law. It contains several sections which will make access to records easier for parents and easier for those who care about children. But it does two things, it protects

the rights of those children and it makes sure that $11 million in federal funds is still available to the state of New Hampshire. There were two sections of the bill which Lori Lutz and the committee would not go along with; one was an attempt to know the name of the accuser, and that is the section that would make the $11 million at risk. The other section was to be able to get court records, psychiatrist records, school records, and police records, as the right of a parent over a child. Those separate agencies retain the right in this bill to decide for themselves whether the accused parent should have those records. Lori Lutz has made very, very clear that the records that are produced within the department which have not always been available to parents, will be. She has talked about the intake records, the termination plan, the plan and the service case logs, the collateral contracts and the assessment forms. But we have a very fine line here and the line is between the so-called rights of parents and the protection of children. The state is in the business at DCYS to protect children and try to keep families together. They are doing their best, but we can not always succeed in some very severe cases and for that reason, decisions are left to the courts, decisions are left to the schools and the psychiatric records are definitely not the property of the parents. So for that reason, I proudly stand before you with a bill which has had hours of work. We have done what we could. I think that all of the hundreds of postcards and anonymous letters and letters that I have received over this bill merely go to show that people do not understand the circumstance, but if they have any sense at all, I would say that they would go with Lori Lutz in what she is doing in the Division of Children and Youth Services, and that we would go along with her as well. Thank you.

SENATOR WHEELER: I guess that this is the first of many engagements that I will probably have with Senator McLane, so this is a marked time in history. This Senate could be about to embark on one of the worse mistakes that we have made. A mistake that San Diego, California had to find out the hard way after a 4-year grand jury investigation. A mistake that a very prominent professor, Richard Gardner from Columbia University has written about in his book; this mistake is beginning to surface all across the country; this isn't a New Hampshire alone problem. I would like to try and explain that mistake to you. If I could draw your attention to the calendar, on page 44, about a third of the way down the page, it says, "the case records of the division shall consist of all official records", then at the end of that paragraph it says, "except for the following records which are not case records." Well, no one names what the following records are, the division has them but they are not case records. Those records that the division has are not always submitted to the court, so that the court doesn't always know that they are there and you don't always know that they are there. But these records are the very things that the DCYS social workers and the people doing the assessments get their facts from to decide whether you are guilty or not. If you are accused of child abuse under this bill, you can't get to the information that people are using to accuse you of child abuse, you may be innocent. You should always have the right to cross-examine the information that is being used against you and this bill takes that away from you. This issue had nothing to do with federal funds. It is unconscionable that we don't let people have the information that is used to convict them of child abuse. We are talking about the peoples' most precious possession, their children. And DCYS does mistakes and DCYS in other states have made mistakes across the country and these mistakes could be avoided if people can have

the information. Item C, "reports contained in the central registry of child abuse and neglect", now the division has made a compromise and at least now, they have said that you can know whether you are in the central registry of child abuse and neglect, that is the type of thing that can keep you from getting a job if you are a daycare worker, teacher, anybody that works with children. But they didn't say that you could find out if you are on the unfounded list and I don't think that that is right. But I also think that under letter C, that you should have the right to all information that is on you in the national register of child abuse. It could be wrong. I am sure that all of us know some people who have been put on a bad credit list accidentally, their names are the same, they transpose a number or something like that. And finally, in letter D, you lose the right to face your accuser. Now I think that we should continue with anonymous tips with child abuse, but it comes to the point where you are going to go to court and someone is accusing you of child abuse, you have the right to cross examine that person and to review their testimony. It is a constitutional issue and we should not allow it to leave this body. When the time is appropriate, I will ask for a roll call vote. Thank you.

SENATOR BLAISDELL: Senator Wheeler, I guess my question to you would be: what rights do those children have in Waco, Texas today that they are being held? What rights do they have?

SENATOR WHEELER: I am not sure, Senator, with all due respect, what that has to do with this.

SENATOR BLAISDELL: It has a lot to do with it, Senator. But I guess if you don't realize it then maybe I had better withdraw the question.

SENATOR COLANTUONO: Senator McLane, I would like to focus on Roman Numeral Two; just below what Senator Wheeler was talking about. Where it says that, "case records shall be confidential, the division shall disclose case records of the following persons, unless in the opinion of the director or deputy director, such disclosures would be harmful to the child in the case records". I take it, first of all, that that is a new provision in the law that is not in current law?

SENATOR MCLANE: That in current law was at the discretion, I believe, of several other people within the division. It has now been limited to the director and the deputy director.

SENATOR COLANTUONO: Is it possible under this language now that a director, and I am not talking about our fine new director, but a director could basically engage in making decisions without any standards and be inconsistent, because I don't see any rules that they have to follow or any standards that they have to follow in making these decisions? I mean it could be a very broad interpretation as to whether disclosure would be harmful. In fact isn't it the case that a director could rule it that all disclosures would be harmful to the child, because that is their personal philosophy?

SENATOR MCLANE: Let me say that there are about 25 cases a year that come to a point where there is great dispute about the records. And let me say that as a professional that has been trained in child development that the director is almost always involved in those cases. Let me give you an example: let us take a 13 year old girl whose grandmother has reported that she believes that the child has been sexually abused. We have said for the sake of $11 million and obviously, for the sake of the family, the grandmother's name cannot be disclosed. The child goes to a

psychiatrist who asserts exactly what has happened and the director decides that because the case, because perhaps the child is retarded and could not appear in court efficiently or for some other reason, that that record should not be disclosed to the defendant. That to me is such a sensitive decision. It has got to go somewhere. It is now in the courts and with the director or the deputy director. We thought it out, we talked about it, and we decided that when you are dealing with a child and a parent, someone has to stand up for the rights of the child and this is the essence of the argument. Does the parent have such control over that child that that child's psychiatric records, that that child's most inner most thoughts can be exposed to the parent? And our answer is that the state's responsibility is no. The state has to have a point where a professional person can make a decision not to share those records. Excuse me, I won't be so long next time.

SENATOR COLANTUONO: I am confused in reading this and understand exactly what is to be done with court records. Oh, before I get into that, on the point that we just discussed on the records which may be disclosed unless the director says that disclosure would be harmful, is it the intent of this legislation that a court could overrule the director and rule that the disclosure be made?

SENATOR MCLANE: If the records belong to the court. What it does is separate out. There are records that are created by the division and there are records that are created by physicians and psychiatrists and there are records created by the schools, there are records perhaps from the police and there are records within the division. The director has the ability to refuse to give those records, which have been created by the division. If the records are in the courts, the courts have that responsibility.

SENATOR COLANTUONO: Thank you.

SENATOR COHEN: Senator McLane, just for perhaps an oversimplified clarification. Would it not be possible that with the disclosure as recommended, that the state's efforts of protecting abused and neglected children would be seriously undermined; therefore, putting the children at risk of more abuse and neglect?

SENATOR MCLANE: You are talking about the disclosure of the accuser?

SENATOR COHEN: Yes.

SENATOR MCLANE: That is the reason that the federal . . . that is the thing that the $11 million hangs on, is the fact that people aren't going to report things that they see if they feel that their neighbors are going to then turn their dog on them or whatever.

SENATOR COHEN: So then would it not be possible that with that disclosure the result could be that the children could be at greater risk?

SENATOR MCLANE: Yes, and that is the interest of the state, in protecting the rights of the children and families.

SENATOR J. KING: A lot of time was spent on this bill alone. In fact, about one week before we decided on the decision, three of us on the committee, plus the people from the DCYS sat down and agreed to eliminate the rules that were in error because there might be a danger in changing the rules that didn't agree with the statute, it eliminated them. Then we went through it sentence by sentence of what should be changed. Sena-

tor Wheeler did agree yesterday that there was a lot in this bill that changed that were very good, so that means that there is an improvement over the bill that was in there. The other thing is that there is a founded registry and there is an unfounded registry, and that is kind of a new situation, I guess, to most of us. The persons on the unfounded registry are the people that have found no cause to push it any further; therefore, they have the folders for the information and they don't know what to do with them. Probably what we can do in the future is to get some kind of a statute where they can mulch them or get rid of them, but they have a problem there. The third part that I want to talk about is, they, as far as I am concerned, are only the custodians of these records, they don't own them. If you go to court on an abuse case and you have a lawyer, that lawyer should get all of the information in his or her discovery as they possibly can and that is when it should be drawn out. If there is a question after that's relative to some other new thing, your lawyer or even yourself the court could disclose the information. I would never want to put any agency in a situation where they have to disclose information where that agency could get in trouble later on. Thank you.

SENATOR WHEELER: Senator King, how does the accused know whether these records even exist when they get to court?

SENATOR J. KING: Well if they don't know that they exist, what are they looking for?

SENATOR WHEELER: They are looking for the information that the social service worker used to get their determination of guilty. They are looking to find out why they said that and they may not know why, and they may not know whether it came from the school, and they may not know whether it came from the guardian ad litem, they may not know whether it came from a psychologist, they may not know whether it came from the next door neighbor or the mailman. And those facts need to be able to be refused.

SENATOR J. KING: I don't disagree with you. But you mentioned that they were found guilty and the agency doesn't find them guilty. The courts find them guilty. And if the courts found them guilty, they have the information. And if you have a question about it, you should certainly be able to get it from the courts which is the right place to get any of this information. To give you an example, I worked for the state in a very confidential department. Even the FBI could not get information from us, they had to go to the courts to get it.

SENATOR BARNES: Senator King, you are going to have to help me out. I am in court, in the courthouse sitting there and I have been accused of child abuse. My understanding is that from what we have here in front of us, if the records are in the court, my lawyer has all of that information available to him or her to defend me before I go to trail?

SENATOR J. KING: A good lawyer should have it all.

SENATOR BARNES: A good lawyer . . . so let's assume that I have a good one, let's hope the heck that I have a good lawyer. So the court, that is no problem, all of those records are available? But what if the court is what I thought that I heard coming from Senator Wheeler, what if those records aren't property of the court, what if they are with the DCYS? Now my lawyer can't get a hold of those. Is it true that my lawyer can't get a hold of those records?

SENATOR J. KING: Think, if the court told the agencies that there is information, that we want to see the complete records that belong with this case and then I would imagine that the agency would have those same obligations to provide that to the court so that those people could look at it.

SENATOR BARNES: Well, I hear you and I like very much what you just said to me, but would you believe that I don't think that I heard that coming from the other end of the row earlier? I thought that I heard that that information to my good lawyer would not be available if the DCYS had it in their files? Now will somebody, could you clear that up for me?

SENATOR J. KING: If he has a charge that there is something in the DCYS files and he goes to court, I am darn sure, I'd say, that the judge would want to make sure that that person was not found guilty or hurt because of information that they are holding and then he could order the agency to provide the records. They would love to have the situation where we could just take the records, here you want it, just take the folder. But if something is wrong then it falls back on them. My feeling is that the court is the one who finds the person guilty or not guilty and they should be able to determine what happens to the case records.

SENATOR BARNES: To follow through, I understand you to say that the court can get that information, my lawyer can get that information from the court if it is necessary?

SENATOR J. KING: Definitely. As I gave an example, the FBI wanted information from us and we said no and they went to the court and the court said to give it to them and we did.

SENATOR BARNES: Senator Wheeler, would you believe that I am a little confused? Would you please tell me, answer the same questions that I have just posed to Senator J. King?

SENATOR WHEELER: Certainly, Senator Barnes, and in essence what I am saying is, in practice, what is happening is that the judges are making decisions on the social workers assessment of the case and even the judge doesn't know or doesn't ask for that information that the case worker made their assessment on. So the judge doesn't even know that it exists often times, doesn't ask for it; therefore, the accused doesn't know that it exists either. They need the right to go to their record and say, "give me everything in the file", then they can go to the court and be prepared to defend themselves if there is a mistake made and the person is innocent.

SENATOR BARNES: Senator King just agreed that I had a good lawyer, now wouldn't my good lawyer, in your opinion, ask? Here I am, they're going to hang me, they're going to take me out and shoot me or whatever they're going to do to me. Now wouldn't my good lawyer be able to get the court to get these records?

SENATOR WHEELER: That is another good point, Senator Barnes, there are a couple of issues there. Number one, we usually are talking about people who are not that well-to-do, they may or may not have an attorney, the state may appoint them an attorney that is working pro bono and may not take the time to do that. But they should have the rights to have their records before they even get to court so that they can come in prepared. Also, Lori Lutz is now saying that we want to keep 70 percent of these cases out of court. Well if these cases don't even get to court how are these people going to get their records to try and find out what the division is accusing them of?

SENATOR BARNES: Thank you, Senator Wheeler. I have a problem with me being in court and not being able to get my records.

SENATOR FRASER: Senator Wheeler, I tried to listen attentively to everything that has been said here, but I would like to refer to section II on page 44, "the case records of the division shall be confidential, the division shall disclose the contents of case records to the following persons unless in the opinion of the director or the deputy director, such disclosure would be harmful to the child". Senator, I have a very simple question, if the director or the deputy director isn't in control of those records, who would you recommend, who would you suggest to be substituted there to be in control of those records?

SENATOR WHEELER: First off, I want to make sure the distinction. Paragraph two talks about, "the case records", everything I have been talking about is not, the case records", even though it is in the possession of DCYS. In paragraph one, it says, "such records do not include", so these psychological reports, reports from the doctors saying that I saw this and I saw that, now remember that in DCYS cases, hearsay evidence is allowed and that is why this has become even more important because hearsay evidence is allowed, the social worker can say that the psychologist told me, without having the psychologist's reports right there, and that is wrong too, but that is another issue.

SENATOR FRASER: Senator, from your testimony I guess so far as section II is concerned, you agree with what is contained in there? It is part I that you have a problem with?

SENATOR WHEELER: Part I, a, b & c are the main issues that I have.

SENATOR FRASER: Thank you.

SENATOR MCLANE: Senator Wheeler, isn't it true and very clear that the parents have a right to the case record of the child, except in very rare circumstances which would be determined by the director? But isn't it true that those case records list the doctors, the court; list what has happened to that child, and if the parent wishes to go directly, they can ask for them? Isn't that true?

SENATOR WHEELER: No. That may be the case, but it may not be the case also. And if a person is going to go to court, I don't want what the psychologist said back in their office, I want exactly what the psychologist said to the DCYS case worker. I want that exact information that was told to the case worker that is going to be used against me. They may say something different back in their office if you try and get the information back there.

SENATOR MCLANE: I guess I am not making clear what I am asking you. You're saying that if a parent goes to a psychiatrist and asks for the records, that the records would not be clear?

SENATOR WHEELER: I did not say that the records would not be clear, but they did not give the exact specific information, the secretary may hand them the wrong file. They should be getting the information from the exact piece of paper that the social worker is using against the parent.

SENATOR MCLANE: I wanted to try and restate Senator Frasers question. That is, who other than the director and the deputy director do you think should have the power over the rights of the child to ask for all of these records?

SENATOR WHEELER: I think the accused, whether it be Pamela Smart, Jeffrey Donner, or any parent who has their child taken away from them, has the rights to all information that is being used against them.

Amendment adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator McLane.

Paired votes: Senators Delahunty and Shaheen.

The following Senators voted Yes: W. King, MacDonald, Fraser, Blaisdell, Baldizar, Pignatelli, McLane, Podles, J. King, Russman, Bourque, Hollingworth, Cohen.

The following Senators voted No: Lamirande, Lovejoy, Currier, Disnard, Roberge, Wheeler, Colantuono, Barnes.

Yeas: 13 - Nays: 8

Ordered to third reading.

HCR 1, relative to a universal health care program in New Hampshire. Public Institutions, Health & Human Services committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: There was a wonderful quote in the debate on this issue and the sponsor, in talking about the resolution said, "the health care system is neither healthy, caring or a system." I think that it is interesting that the medical society joined in writing this resolution because they had two parts that they were vitally interested in: They support universal access to health care as long as any plan consults with the providers and its making, and insists on quality. So for that reason, the committee passed unanimously, this resolution. This is a feel good resolution as my friend Tom calls it.

Adopted.

Ordered to third reading.

HJR 1, a joint resolution supporting the improvement of primary health care delivery. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: This joint resolution endorses the direction the Division of Public Health Services and Organizations around the state are taking to assure all New Hampshire residents have access to basic, preventative and primary health care services. Our present system funds multiple organizations in every area of the state, each for a separate service. A single area may have contracts held by different agencies for a well child, prenatal, family planning, WIC, NHIV, AIDS. This non system has women and children navigating between agencies, each serving one part of their needs. Public Health wants to streamline and consolidate this local service base to create more one-stop shopping where families can come and have all family members served. This will need to be done in a gradual way, working with communities to bring their services together or at a minimum, coordinate them better. There are efficiencies to be gained, but most importantly, this transition will curtail the inappropriate and costly use of emergency room services for medical care that should have been given in clinics or at the doctors office. Lastly, it puts New Hampshire in a position to take advantage of multiple funding and reimbursement opportunities established through Congress in the last

few years. These changes can help fund some clinics in underserved areas and can help us recruit and retain primary care doctors and nurse practitioners in more rural areas and areas with populations who are underserved. Public Health and Primary Care Steering committees asks that you support the committee on this. This bill had the support of the medical community, the nursing committee, the hospital organizations and as well as community clinics from all parts of the state, so we hope that you will support us.

Adopted.

Ordered to third reading.

SB 70, an act requiring that dogs and cats placed by shelters and pounds be spayed or neutered. Wildlife & Recreation committee. Ought to Pass with amendment. Senator Roberge for the committee.

1308B

Amendment to SB 70

Amend RSA 437:23, I as inserted by section 1 of the bill by replacing it with the following:

I. No agent acting on behalf of an animal shelter facility, as defined in RSA 437:2, I shall give, release, sell, trade or otherwise transfer to a new owner, with or without a fee, any dog or cat that has not been spayed or neutered, unless a deposit of not less than $10 nor more than $40 has been tendered to the shelter for spaying or neutering such dog or cat. The shelter may make appropriate arrangements for the spaying or neutering of such dog or cat by a licensed veterinarian. The shelter may retain funds from the deposit to reimburse it for all administrative costs it incurs in handling the deposit and shall return the remainder of the deposit to the person who made it upon receipt of a written statement from a veterinarian that the dog or cat has been spayed or neutered.

SENATOR ROBERGE: Mr. President and members of the Senate, SB 70 requiring that dogs and cats placed in shelters and pounds to be spayed or neutered. If they are old enough, yes, spayed or neutered, if they are too young, they are required to take a deposit somewhere between $10 and $40 and when the new owner has the animal spayed or neutered they get their money back after the administrative cost is deducted. The amendment on page 46 of the calendar has to do with, in fact if your animal is picked up by a pound or shelter and you come back to reclaim your animal, you know, you shouldn't have to spay or neuter it, if it wasn't neutered, you should get it back the way that you lost it, so we had forgotten to do that. That is the only change and the amendment does that on page 46.

SENATOR COLANTUONO: I am just glancing over the amendment, but does this bill say that every dog and cat leaving a shelter has to be spayed?

SENATOR ROBERGE: Yes, except if it is your dog or cat. If you come back and your dog has been taken in and you can prove that it is your dog, then of course it won't be spayed or neutered.

SENATOR COLANTUONO: What happens if you want to get a dog for your kids or your family or whatever, and you want it to have puppies and that is the reason that you are getting the dog, is to breed it or have puppies or . . .?

SENATOR ROBERGE: Senator Colantuono, most of these animals are not pedigree animals, they are pet quality animals. You are getting it for a minimal fee and now you really want to make money on the deal? I mean, if you just want a pet for your children . . .

SENATOR COLANTUONO: No, you want puppies that's all.

SENATOR ROBERGE: Why do you want puppies?

SENATOR COLANTUONO: Cause I have a lot of children!

SENATOR ROBERGE: I don't want puppies, Senator Colantuono wants puppies.

SENATOR COLANTUONO: I don't want to deprive any of the fun and that's it.

SENATOR LAMIRANDE: Senator Roberge, first of all, I don't want to have puppies. Would you believe that I had a call pertaining to this exact bill and the question was that, "if my thoroughbred dog is lost and picked up by a pound and it happens to be there and unbeknownst to me, I can't find my dog, and it gets transferred to another facility and now they are going to neuter or spay my dog and I have nothing to say about it?" Is there anything in this bill that would prevent this from happening?

SENATOR ROBERGE: First of all, it doesn't get spayed or neutered until it is going to be adopted out, okay? That is what we put in here. If it is your dog and you come in there and the dog recognizes you and you can prove that it is your dog, you know, they are not going to try and neuter or spay your pedigree dog that just got picked up off of the street by mistake or perhaps ran out the door when you left it open or something. I mean that is not the intent. The intent of the bill is that we have an animal overpopulation problem, everybody admits it, okay? What do you do about it? Okay? It is not . . .

SENATOR BLAISDELL: She would never let Harry get neutered, I will tell you that.

SENATOR ROBERGE: He is neutered.

SENATOR LAMIRANDE: Senator Roberge, my question would be, if I have a thoroughbred animal and that animal happens to be stolen or lost or whatever, maybe I am driving from one location to another, from the northern part of the state to the southern part of the state and my dog is picked up and placed in a pound, that dog has not been fixed because it is a breeding dog. Now, I don't know where the dog is and 30 days have elapsed, somebody wants that dog because it is a great dog. Now the pound or the facility that it is at will fix that dog before it is given to that person, when I don't even know where my dog is?

SENATOR ROBERGE: Senator Lamirande, do you register your dog?

SENATOR LAMIRANDE: Of course I register my dog, I don't have a dog! I don't register my dog because I don't have a dog. I am talking about dogs that are for breeding. The dog may not have a tag on it.

SENATOR ROBERGE: I am not even talking about breeding dogs, I am talking about all dogs are required to be licensed. If your dog has a tag, then those shelters will do everything humanly possible to find the owner of that dog. And your dog should have a tag, and your dog should be licensed, and if it isn't, that is your fault. That is the law.

SENATOR LAMIRANDE: To quote Senator W. King, "you are barking up the wrong tree." My question is, if in fact with this bill, they have the right to fix the dog?

SENATOR ROBERGE: Yes.

SENATOR LAMIRANDE: Yes they do? Then I would like to make a motion for re-referral or table, re-referral, I think that it carries more weight.

SENATOR BLAISDELL: This is Senator Shaheen's bill and out of courtesy to her, I would like to have SB 70 laid on the table. I don't mean the dog, I mean the bill.

Recess.

Out of recess.

Senator Blaisdell withdrew his request to have SB 70 laid on the table.

Question is on the committee amendment.

Amendment adopted.

SENATOR DISNARD: I rise in opposition to SB 70. I sat on the committee and the same committee heard SB 100 and SB 151 relating to neutering and we passed it. The majority of the people that were against SB 70 and that spoke there, were against SB 70. The American Kennel Association, the Sled Dog people were strongly against it because there is a House Bill to study the matter if there is such a problem. When you hear the American Kennel Association people speak who have very expensive animals, when you hear the people with the sled dogs, and the sled dogs sometimes get away and they have to go on to another place to race, the dogs are picked up and would be neutered under this. There was and is a lot of strong opposition. I request that you vote no. Someone could bring it in here next year as another bill. The House has a bill to study this, let's listen to what they say. Two bills, we gave neutering on SB 100 and SB 151, let's at least hold back on at least one at the request of these people. Remember the people who own the expensive prestigious dogs and those who want pets spoke against this.

SENATOR COHEN: The committee heard quite a bit of testimony on this, but the reality is that it doesn't need studying. There is an overpopulation problem and we have to address it. This is a good way to address it. It protects the owners of the pets, it doesn't in anyway threaten pets that the owner wouldn't want to be neutered. We need to deal with the overpopulation problem now. I strongly support the passage of this bill.

Ordered to third reading.

Senators W. King and Lamirande in opposition to SB 70.

RESOLUTION

Senator Podles offered the following resolution:

#1834

SR 5

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

requesting an opinion of the justices concerning
the constitutionality of SB 61.

Whereas, there is pending in the Senate, SB 61, "An act relative to substitution of alternate jurors after final submission of a case to a jury;" and

Whereas, SB 61, proposes to amend RSA 500-A:13 to establish procedures allowing an alternate juror to be substituted after the final submission of a case to the jury in either a civil or criminal case; and

Whereas, the New Hampshire Senate, in considering this proposed legislation, is unsure and uncertain as to the constitutionality of the procedure proposed for substitution of alternate jurors after a case has been finally submitted to the jury; and

Whereas, a Constitutional defect in the procedure for substituting alternate jurors would adversely affect the fair administration of justice and deprive citizens of the right to trial by jury; and

Whereas, Art. 74, Part II of the New Hampshire Constitution authorizes the Senate to request an opinion of the Justices of the Supreme Court upon such important questions of law pending and awaiting consideration and action by the Senate; now, therefore, be it:

Resolved by the Senate:

That the Justices of the Supreme Court be respectfully requested to give their opinion on the following questions of law:

1. Is the procedure for substitution of an alternate juror after a civil case is finally submitted to the jury, as proposed in SB 61, permitted by the provisions of Art. 20, Part I of the New Hampshire Constitution, which guarantees the right of trial by jury in civil cases?

2. Is the procedure for substitution of an alternate juror after a criminal case is finally submitted to the jury, as proposed in SB 61, permitted by the provisions of Art. 15, Part I of the New Hampshire Constitution, which guarantees the right of trial by jury in criminal cases?

3. Is the procedure proposed by SB 61 otherwise permitted by the New Hampshire Constitution?

That the senate clerk transmit a copy of this resolution to the Justices of the New Hampshire Supreme Court.

SENATOR PODLES: Mr. President, we table a bill which was SB 61. What we are doing is sending it to the Supreme Court for an advisory opinion. The bill SB 61 relative to the substitution of alternate jurors after final submission of a case to the jury. We have a resolution requesting an opinion of the justices concerning the constitutionality of SB 61. It is now before you and we would like an ought to pass. It has been recommended by the full Senate Judiciary committee and we are recommending ought to pass.

Adopted by the necessary 2/3 vote.

SUSPENSION OF THE RULES

Senator W. King moved that Senate Rule #22 be suspended in regard to holding of a public hearing and the notice of such hearing in the Senate Calendar on SB 248 an act establishing a committee to study the feasibility of locating a sports arena in southern New Hampshire and making an appropriation therefor.

Adopted by the necessary of 2/3 vote.

SB 248, an act establishing a committee to study the feasibility of locating a sports arena in southern New Hampshire. Economic Development committee. Ought to Pass with Amendment. Senator Barnes for the committee.

1812B

Amendment to SB 248-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a committee to study the feasibility of locating a sports stadium in southern New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a study committee to examine and review the feasibility of locating a sports stadium in southern New Hampshire.

2 Membership. The committee shall consist of:

I. The governor or designee.

II. Two members of the senate, appointed by the senate president.

III. Two members of the house of representatives, appointed by the speaker of the house.

IV. The director of the office of state planning or designee.

V. The commissioner of the department of resources and economic development or designee.

VI. One appointee by the board of directors of the business finance authority.

VII. The executive director of the Greater Nashua Regional Planning Commission or designee.

VIII. The executive director of the Rockingham Regional Planning Commission or designee.

IX. The executive director of the Southern New Hampshire Regional Planning Commission or designee.

X. A representative of the banking industry, appointed by the governor.

XI. A representative of the construction industry, appointed by the governor.

XII. A representative of a construction trades union, appointed by the governor.

XIII. The commissioner of the department of transportation or designee.

XIV. The state treasurer or designee.

3 Duties of the Committee. The committee shall:

I. Determine possible locations in southern New Hampshire for the location of a sports stadium.

II. Determine the possible interests of professional football or baseball franchises to locate to such a location.

III. Study and make recommendations regarding financing relationships including whether such relationships should be private, public, or a combination of both private and public.

4 Appointments; Mileage. Appointments of all members of the committee shall be made within 30 days of the effective date of this act. The members of this committee shall serve without compensation, except that members appointed from the legislature shall receive compensation for mileage at the usual legislative rate.

5 Officers; Meetings. The first meeting of this committee shall be called within 60 days after the effective date of this act by the first member of the senate appointed. At the first committee meeting, the members shall choose a chairperson and a vice chairperson by majority vote from among the membership. After the first meeting, all committee meetings shall be called by the chairperson. Meeting dates and places shall be set at the discretion of the committee.

6 Report. The committee shall prepare a report describing its determinations and recommendations. Copies of this report shall be delivered to the governor, the speaker of the house of representatives, and the senate president on or before November 1, 1993. Secretarial and staff assistance shall be provided by the senate.

7 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a committee to study the feasibility of locating a sports stadium in southern New Hampshire.

SENATOR BARNES: I am doing the report on 248. The Economic Development committee had this bill. Our committee takes the credit for the Senate and the House in the state of Massachusetts for putting their act together so that they can keep their teams down there. We recommend that this ought to pass with amendment. What the amendment does is take out the $25,000 that we were asking for, for a consultant to study this. Also, for the record, during the hearing yesterday, during the executive session, President Hough was there as a member of the committee. I made the recommendation in the makeup of this committee and I don't see him here, that Dean Blaisdell and myself be part of the committee so that we can travel around this summer to all of the baseball parks and bring back recommendations of a good type of facility if we go forward with it. The committee recommends ought to pass with amendment.

Amendment adopted.

SENATOR W. KING: Amendment 1833, which merely changes the intent from strictly a sports stadium to the issue of a convention center/conference complex/sports stadium or any combination of those things. The thought was that while we were looking at this issue we ought to look at the possibility of a convention/civic center type of thing where a sports team could play several times a year in the event that we could convince the Celtics to play a few times a year up here and other teams. So this merely changes the intent so that it looks at all of those different options.

Senator W. King offered a floor amendment.

1833B

Floor Amendment to SB 248-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a committee to study the feasibility of locating a convention center, conference complex, sports stadium or combination center in southern New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a study committee to examine and review the feasibility of locating a convention center, conference complex, sports stadium or a combination of any of these facilities in southern New Hampshire.

2 Membership. The committee shall consist of:

I. The governor or designee.

II. Two members of the senate, appointed by the senate president.

III. Two members of the house of representatives, appointed by the speaker of the house.

IV. The director of the office of state planning or designee.

V. The commissioner of the department of resources and economic development or designee.

VI. One appointee by the board of directors of the business finance authority.

VII. The executive director of the Greater Nashua Regional Planning Commission or designee.

VIII. The executive director of the Rockingham Regional Planning Commission or designee.

IX. The executive director of the Southern New Hampshire Regional Planning Commission or designee.

X. A representative of the banking industry, appointed by the governor.

XI. A representative of the construction industry, appointed by the governor.

XII. A representative of a construction trades union, appointed by the governor.

XIII. The commissioner of the department of transportation or designee.

XIV. The state treasurer or designee.

XV. A representative of the hospitality industry, appointed by the governor.

3 Duties of the Committee. The committee shall:

I. Determine possible locations in southern New Hampshire for the location of a convention center, conference complex, sports stadium or combination of any of these facilities.

II. Determine the possible interests of professional football or baseball franchises to locate to such a location.

III. Study and make recommendations regarding financing relationships including whether such relationships should be private, public, or a combination of both private and public.

4 Appointments; Mileage. Appointments of all members of the committee shall be made within 30 days of the effective date of this act. The members of this committee shall serve without compensation, except that members appointed from the legislature shall receive compensation for mileage at the usual legislative rate.

5 Officers; Meetings. The first meeting of this committee shall be called within 60 days after the effective date of this act by the first member of the senate appointed. At the first committee meeting, the members shall choose a chairperson and a vice chairperson by majority vote from among the membership. After the first meeting, all committee meetings shall be called by the chairperson. Meeting dates and places shall be set at the discretion of the committee.

6 Report. The committee shall prepare a report describing its determinations and recommendations. Copies of this report shall be delivered to the governor, the speaker of the house of representatives, and the senate president on or before November 1, 1993. Secretarial and staff assistance shall be provided by the senate.

7 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a committee to study the feasibility of locating a convention center, conference complex, sports stadium or a combination of any of these facilities in southern New Hampshire.

Floor amendment adopted.

Ordered to third reading.

SB 220-FN-LOCAL, an act relative to criminal history checks for school personnel and applicants. Judiciary committee. Ought to Pass with Amendment. Senator Podles for the committee.

1809B

Amendment to SB 220-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Criminal History Checks. Amend RSA 189 by inserting after section 13 the following new section:

189:13-a Criminal History Checks.

I. A criminal history records check of any applicant for certification shall be conducted in accordance with this section.

II. All applicants for certification shall submit notarized criminal history records release forms to the New Hampshire department of education.

III. In addition to any other requirements established by law, the submittal of forms pursuant to paragraph II of this section shall be a prerequisite to certification, and no person shall be certified who has not complied with the provision of that paragraph.

IV. All criminal history records release forms executed by applicants for certification shall be submitted to the New Hampshire state police for the purpose of utilizing the files and records of the New Hampshire state police and the Federal Bureau of Investigation. The New Hampshire state police shall conduct a criminal history record inquiry for all applicants for certification, and process them through the Federal Bureau of Investigation.

V. All costs arising from the processing of criminal history records checks pursuant to the provisions of this section shall be borne by the applicant. The costs shall be limited to the actual direct and indirect costs arising from the processing of the criminal history records check. Payment for all costs shall be submitted by the applicant as part of the application for certification.

VI. Applicants for certification who have been convicted of child pornography, aggravated felonious sexual assault, felonious sexual assault, or kidnapping in this state, or under any statute prohibiting the same conduct in another state, territory or possession of the United States, shall not be certified in this state.

VII. A criminal history records check of any non-certified applicant for employment with a school administrative unit or school district may be required. If required, any applicant selected for employment shall submit a notarized criminal history records release form to the employer, and such criminal history records check shall be conducted pursuant to the procedures set out in paragraph IV. This section applies to applicants for employment with private businesses and agencies which contract with school administrative units or school districts to provide services, including but not limited to cafeteria workers, school bus drivers, and custodial personnel. The costs of individual records checks shall be borne by the employing school administrative unit or school district. Costs for contracted employees shall be borne by the contractor.

2 New Section; Termination of Employment. Amend RSA 189 by inserting after section 14-c the following new section:

189:14-d Termination of Employment. Employees of a school administrative unit or school district in this state who have been convicted of homicide, child pornography, aggravated felonious sexual assault, felo-

nious sexual assault, or kidnapping, in this state or under any statute prohibiting the same conduct in another state, territory or possession of the United States, shall have their employment terminated by the school administrative unit or school district after it receives notice of the conviction.

3 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill sets forth the requirements and procedures relating to criminal history checks for applicants for certification and provides for termination of employment if an employee is convicted of certain crimes.

SENATOR PODLES: Mr. President, SB 220 is a result of a study committee. It establishes the machinery for criminal history checks of school employees. It sets up requirements and procedures for the criminal history check and for criminal records. Inquiries of selected applicants through the New Hampshire state police and the federal bureau of investigation. The selected applicant need only to sign a release allowing for the criminal record history and pay $10 for the cost associated with the criminal record inquiry and fingerprinting. The bill also changes slightly, the offenses and makes it a class B felony to falsify employment application with any government agency. The amendment on page 42 of your calendar deletes the fingerprinting mandate. It also deletes the specific references to teachers so as to make the bill apply to all persons seeking certification and it also permits the SAU to require criminal history checks of applicants for non certified employment positions such as the custodial cafeteria workers, secretaries, the bus drivers, aids and so forth. The amendment also requires that an employee shall be terminated if convicted of homicide, kidnapping or any sex crime. Applicants for certification shall bear the cost of processing the record check. Applicants for known certified positions shall have the cost of records check borne by the SAU. Mr. President, we also have a correction in the amendment and we have an addition here which gives the cost of record check shall be borne by the employing school administrative unit of school district or the contract at the employing school administrative unit on school districts option. It gives that option. The SAU can be responsible also for the record checks and that expense. So that is what they missed out in the original amendment. This bill is an attempt at closing in on the interstate movement of criminals who use their heinous acts of sexually abusing children. The committee recommends ought to pass with amendment. I want to make it clear that this deals only with public schools and that this is only for the new people coming in, not the existing employees. It is ought to pass with both amendments.

Amendment adopted.

Senator Podles offered a floor amendment.

1842B

Floor Amendment to SB 220-FN-LOCAL

Amend RSA 189:13-a, VII as inserted by section 1 of the bill by replacing it with the following:

VII. A criminal history records check of any non-certified applicant for employment with a school administrative unit or school district may be required. If required, any applicant selected for employment shall submit a notarized criminal history records release form to the employer, and

such criminal history records check shall be conducted pursuant to the procedures set out in paragraph IV. This section applies to applicants for employment with private businesses and agencies which contract with school administrative units or school districts to provide services, including but not limited to cafeteria workers, school bus drivers, and custodial personnel. The costs of record checks shall be borne by the employing school administrative unit or school district or the contractor, at the employing school administrative unit or school district's option.

Floor amendment adopted.

Ordered to third reading.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled:

HB 104, amending the way in which the towns of Londonderry and Sunapee shall collect their taxes for the fiscal year ending June 30, 1994 and December 31, 1993, respectively.
Senator Currier moved adoption.

Adopted.

Recess.

Out of Recess.

INTRODUCTION OF GUESTS
COMMITTEE REPORTS

SB 77, an act relative to resellers of telecommunication services. Economic Development committee. Majority Report: Inexpedient to Legislate. Senator Fraser for the committee. Minority Report: Ought to Pass. Senator Cohen for the committee.

SENATOR FRASER: Mr. President, as was suggested at the conference meeting that there was going to be a substitute motion offered by Senator Barnes. It is my feeling that if that motion should pass that the debate would be limited and that rather than going into a protracted debate now, I would urge the Senate President to recognize Senator Barnes for his substitute motion.

SENATOR COHEN: I would concur with my colleague Senator Fraser that we should dispose of the substitute motion first before we get into this debate.

SUBSTITUTE MOTION

Senator Barnes moved to substitute re-refer to committee for ought to pass.

SENATOR BARNES: I rise to have the substitute motion of re-refer to committee on SB 77 and I would like to speak to you about why I put that motion before you. I sit on the Economic Development committee and we heard long testimony on this bill last week. I for one, was a little confused and concerned that some important testimony that came before the committee was in writing from Professor Irwin from the University of New Hampshire, it was a very fine testimony. I was also disturbed to find that our PUC Commissioner, who I have a lot of respect for, Doug Patch, was not at the committee hearing so that we could discuss the Professor's letter with the PUC. Well I have had conversation with the

PUC Commissioner and he has written a letter to me, giving me some comments on his thoughts on Professor Irwins letter. I think in all fairness to both sides on this issue, I think that we have to do a little more work on it. It is not going to hurt to do it and do it right so that we will all feel at ease with it and so that we can have testimony from our PUC Commissioner from this very assiduous Professor from the University of New Hampshire in the same room so that we can ask them questions and see what is right and what is wrong. Right now I am concerned on this up and down motion of ought to pass and ought not to pass. I don't think that we are doing the folks of the state of New Hampshire a fair deal by not allowing these two folks on opposite sides of the fence to come in and to enlighten us on what their decisions are. Thank you very much, Mr. President.

SENATOR COHEN: This bill was originally heard in Executive Departments. Many hours of testimony was heard there. The PUC presented its case, both sides presented their cases there. It was then as we all know, re-referred to Economic Development, where again, many hours of testimony were taken. We have heard from both sides of the issue. It is true that Doug Patch himself wasn't there, but he sent his able representative who spoke and gave the PUC position. I would say that it is time that we dispense with this bill, vote it up or down today. It has been re-referred and we have spent hours and hours on it already and we have plenty of information there. I don't think that there is anything more that we are going to learn from either side. I would urge defeat of the motion.

SENATOR BARNES: Senator Cohen, during the second hearing with the Economic Development committee you were there for the entire testimony. Did you hear any conversation concerning Doctor Irwin's letter other than it was great and that he is a very respected person? Did you hear anyone from the PUC have any comments on that letter?

SENATOR COHEN: No, I did not. We heard quite a bit of testimony on the bill. We have also heard a similar bill back in 1991 as well. There was a great deal of testimony on that as well. It is time to deal with it.

Question is on the substitute motion of re-refer.

Division vote requested.

Senator Shaheen withdrew her motion for a division vote.

Division vote requested.

Yeas: 6 - Nays: 17

Motion of re-refer fails.

SENATOR COHEN: The state of New Hampshire is made up of small businesses, about 80 percent of small businesses. It is the life of our communities. They are the ones who are hardest hit by the cost of telecommunications. They can't take advantage, the small businesses can't take advantage of large volume discounts that the large users obtain from the carriers. Resellers specifically address this problem. They help the lower end market and bring not only reduced prices, but enhanced services that will help this large segment of our population which needs the help. Resellers simply take advantage of volume pricing and pass those savings on. This bill will have an immediate economic impact on the small businesses in our state and be very good for our economy. Forty-six other states have deregulated or significantly reduced regulation or fully deregulated resellers with no negative impact on either consumers or the bill

operating companies. Twenty-five states require no certification of resellers. Forty states don't regulate them in any meaningful way. Because New Hampshire has not encouraged reseller competition, the result is that New Hampshire is the only state to experience significant increases in long distance toll rates. New Hampshire is years behind other states in enacting deregulation of telecommunications resellers. We can't compete with our neighboring states. Vermont and Massachussetts have encouraged competition for years and as a result, Vermont's rates are one third less than New Hampshire's, and Massachusett's rates are less than half of ours. Monopoly services are no longer efficient or cost-effective. Until pressure comes from competition to force prices downward, thus forcing New England Telephone to be more efficient in order to compete, they will continue to spend twice as much as any other bill company in the country on advertising. New England Telephone's advertising budget is nearly twice that of all others. This bill is definitely in the economic interest of the small businesses of the state of New Hampshire and I strongly urge its passage.

SENATOR FRASER: I rise in opposition to the pending motion of ought to pass. Mr. President and my colleagues in the Senate, it's a rare occasion when I become a spear carrier supporting a motion of inexpedient to legislate. Especially when a bill originates in the Senate and has such a distinguished group of sponsors such as SB [illegible] I've tried very hard to understand the complexities of SB 77 and I truly believe that it serves no useful purpose, long-term, for the citizens of New Hampshire. It is my view, that what SB 77 aims to accomplish is to address a request of one small telephone reseller known as Atlantic Connections Limited, who just doesn't want to be regulated by the state. A reseller is anyone other than a local exchange carrier which is authorized by the Public Utilities Commission to purchase access services from a local exchange carrier for use in the sale of telecommunication services to end consumers use. In other words, a reseller piggybacks onto the network of an established communications carrier. What SB 77 purports to do is to eliminate any regulatory oversight of resellers who have already been adjudged by the New Hampshire Supreme Court as Public Utilities. ACL came into the state in 1988 and immediately commenced using New England Telephone lines to provide services for resell to consumers at a rate less than New England Telephone. This is a tremendous economic lift to telephone users in the state of New Hampshire. It stimulates competition and the users are clearly the beneficiaries and we support the concept; However, as I will suggest there is a clear need, in my view, for some regulatory oversight. For a little bit of history: In 1990 the PUC discovered that Atlantic Connections had been reselling telephone services in New Hampshire since 1988 without having been certified. Until the PUC issued a show cause order, ACL did not seek certification. As a result of a hearing, the PUC ruled that Atlantic Connections was in fact a utility and subject to state regulation. This decision was appealed to the New Hampshire Supreme Court and the New Hampshire Supreme Court upheld the PUC's position, namely, that they are a utility. During that period, Atlantic Connections was not paying access charges to New England Telephone. These are the charges assessed for the use of the network. As a result of not being successful in their efforts to overcome the PUC's decision through the court system, they have come to the legislature with what is now SB 77. I know that the Senators have received a great deal of correspondence about this issue, and with your permission I would just like to cite some of the comments that have been raised. First and

foremost is a statement of Doug Patch, Chairman of the PUC in paragraph two, "We believe it is unwise to operate without some commission oversight, given the critical nature of telecommunications to businesses and households." On page two, Commissioner Patch relates, "should any reseller cease operation, whether as a result of a court order, technical malfunction of financial instability the effect on customers and their businesses would be devastating. This is a critical reason why the financial and managerial ability of resellers should be reviewed by the commission." In the next paragraph the Commissioner goes on to say, "we continue to believe, therefore, that it is appropriate to require all resellers to demonstrate the financial integrity and financial expertise to commence and continue business in the state of New Hampshire." I want to speak briefly to a letter dated March 5, addressed to Senator Wayne King from Commissioner Steve Rice of DRED, and I quote from the middle of paragraph three, "it is a function of necessary capital investments in high speed, high capacity fiber-optic transmission equipment, for example that determines the value of telecommunications infrastructure to large corporations, small businesses, public institutions, and individuals." As Chairman of the Governor's Task Force on telecommunications, Commissioner Rice articulated that the, "state of the art telecommunications" is more than a function of the price paid for assessing services. I further quote, "it would indeed be unfortunate if the passage of SB 77 resulted in reduced incentive or ability on the part of local exchange companies to make these vital investments in telecommunications infrastructure." Commissioner Rice further states that, "New Hampshire needs a telecommunications policy that extends beyond the narrow focus of SB 77 to comprehensively address toll rates, exchange rates, pricing issues, and related matters." Probably the most provocative letter received was from representatives of Long Distance North, the very first reseller in New Hampshire. It's a rather lengthy document, but I hope I have picked the most important parts. Item number seven reads as follows: "It is LDN's position that, in the present state of beginning telecommunications competition in New Hampshire, only regulation by the PUC provides some assurance that long distance carriers — whether resellers or facilities-based — will not engage in illegal conduct in order to gain a competitive edge." Further, he went on to say, "as I mentioned above, the 16 parties to the PUC generic competition proceeding have been involved in settlement negotiations. The primary objective of those negotiations has been to develop a structure which will permit the growth of fair competition in the New Hampshire long distance market, while requiring long distance carriers to pay sufficient access charges to assure that the development of competition does not result in a shortfall in local exchange company revenues and a need to increase local rates." Some of the other correspondence that has been received is pretty hard-hitting stuff, such as a letter from the President and General Manager of Merrimack County Telephone who suggests that a change in the current law to allow ACL or any other reseller of telecommunications services, is to basically do whatever they wish, without restriction and with no oversight, is a very narrow approach to a very complex situation. This is not a "pro-consumer bill" as many have termed it. It's a "cream-skimmer's bill". In his conclusion, "finally, and this is a personal observation, if the state Senate or the legislature as a whole, has a problem with, or is not satisfied with the way the New Hampshire Public Utilities Commission has handled and is handling competition and competitive entry into the telecommunications arenas within the state, then I would think it should be

addressed directly between the legislative leadership, the Governor and the New Hampshire PUC not through the passage of legislation such as SB 77." We have a letter from the New Hampshire Telephone Association. They are comprised of 11 independent telephone companies doing business in New Hampshire. I am just going to quote three quick lines from their letter: "ACL is one reseller trying to get from the legislature what it could not get from the PUC or the New Hampshire Supreme Court. Second, NHTA is not opposed to resellers operating in New Hampshire so long as those resellers operate within a framework or certification. Lastly, there is a need for this limited regulatory oversight of resellers to prevent the abuses of the past in which ACL has been engaged." We have a very strong letter from GTE telephone in Pembroke, and I could go on and on. Mr. President and my colleagues in the Senate, I would urge this body to support the motion of inexpedient to legislate because SB 77 represents a piecemeal approach to telecommunications policy. It represents uneven, unfair, and uneconomic regulation in this state, because it does not consider the interests of all the telecommunications providers and most importantly, it does not consider the long-term effect on the ratepayers. Mr. President, I urge that SB 77 be reported as inexpedient to legislate.

SENATOR BLAISDELL: Senator Fraser, you brought up some very excellent points and I received the same letters that you spoke about. Twice in your speech you talked about oversight, is there oversight in this bill?

SENATOR FRASER: If this bill passes in its present form there will be no oversight. That is the whole effort on the part of ACL is to become deregulated so that they could charge whatever they want. That is the whole idea of the bill.

SENATOR BLAISDELL: Thank you.

SENATOR W. KING: This is the first bill that has come out of Economic Development with a split report. While I am going to vote in favor of the bill, I do want to make a couple of comments that aren't necessarily for or against. I don't think that there is anybody necessarily wearing a white hat in this situation and there are good arguments that have been made on both sides. I would like to put two things on the public record. One area where I think that everyone on the committee agrees, and if there is anyone on the committee since I haven't had a chance to talk with everyone, who disagrees with this, I think that I would ask you to stand up and say so, so that the public records show this. But irrespective of, the outcome of this vote, I believe that we all agree that it is not the intent of this legislation or anyone on the Economic Development committee to take a position on the issue of access fees. That access fees are not, it is expected that these telecommunication companies should be paying access fees to the folks from whom they buy the block time so that it should be clear that we are in general agreement in the committee that this is not intended to give anyone the right not to pay access. The second thing is the point that former Senator Dupont brought out. Senator Dupont testified at the hearing as a citizen and I think that it is important to make note of what he said because I feel very strongly about it. And that is that PUC whether for lack of resources or for whatever reasons, is not really equipped at this point to deal with the dynamic industry that we are talking about and that we ought to be asking the PUC and we ought to be working with the PUC to take a thorough review of the way in which they review projects, the way in which they review proposals so that they can expedite the process so that they can become as

dynamic with the way in which they regulate as the industry has become itself. This is an industry that is changing almost daily and we are going to have to deal with those daily changes if we are going to take advantage of the competitive marketplace that we have here. So it is important that we all speak with one voice. I think when we say that, the PUC needs to begin the process of being able to respond to the dynamics of the marketplace more appropriately, as Senator Dupont suggested.

SENATOR LOVEJOY: I rise in support and to speak in favor of the motion of ought to pass. I rise not only as a state Senator, but as a small businessman who takes advantage of the opportunity to use the telephone reseller. I found that in my small real estate business in Barrington, New Hampshire that I am able to save consistently $100 or more dollars a month on my telephone bill by using the services that are local from reseller. That is important to me and it is not only important to me, but it is important to the 900 other small business customers of that telephone service reseller. Now I have checked my figures and just this past month I have had to disconnect the telephone reseller service because we had problems within our inner office telephone system. So we operated the month without using the telephone reseller service and sure enough, my telephone bill had reached a little more than $100 for that month that I wasn't able to take advantage. As a small business person and as a state Senator, I speak in favor of ought to pass. Thank you.

SENATOR BARNES: Senator Lovejoy, I appreciate your numbers because I think that they are very important to the small business people of the state of New Hampshire. What do you think will happen to that $100 savings if this bill is passed?

SENATOR LOVEJOY: I believe that I say that this will continue as they have and there is no reason to think otherwise.

SENATOR BARNES: Senator, would you believe that I am sure that you feel that way, but I personally have a tremendous problem thinking that that is going to happen?

SENATOR FRASER: Senator, would you believe that I, for one, wholeheartedly support open competition and the resellers program?

SENATOR LOVEJOY: I would think so, Senator.

SENATOR FRASER: Would you further believe that all that I am suggesting is that SB 77 removes any regulatory oversight from ACL?

SENATOR LOVEJOY: I would believe that your position is sincere and I listened carefully to your testimony.

SENATOR CURRIER: Senator Lovejoy, isn't in fact the language in this bill, the same identical language as the state of Minnesota and something like 32 other states? The only difference in terms of the certification process, but the actual language of the definition of reseller is the same as the Minnesota language and I think it is 32 other states that have all deregulated reseller? Is that not a fact?

SENATOR LOVEJOY: We heard testimony to that fact. I haven't personally reviewed those 32 states, but we heard testimony on that.

SENATOR COLANTUONO: I rise as the person who was originally designated to give the report of the Executive Departments committee, which was the committee which originally heard this bill. At the time I was to give my report I had heard that it was going to be sent to Economic Development so I didn't give my report. I would just like to give a brief version of my report and why the Executive Departments committee voted that

this bill ought to pass. I also rise to support Senator Cohens motion of ought to pass. This bill as Senator Cohen eluded to, came to us in the 1991 session. Because there was pending litigation in the courts, we sent the bill to interim study. The issue in front of the PUC at that time and in front of the Supreme Court was whether a reseller was a public utility under New Hampshire Public Utility law, under the definition section. The court held in a very narrow decision that it was a public utility, but certainly this isn't the end of the inquiry and that is why Senator Cohen and other co-sponsors brought this bill back to essentially say that as a matter of legislative policy. Resellers are not public utilities and there is no public policy reason why they need to be regulated. The bill came to our committee and we recognized that there were certain problems with the language of it, so an amendment was crafted. What the bill now basically does is to state that resellers are not public utilities who need to be regulated by the commission, but they will register with the commission so that the commission knows who is out there operating in the state and if they don't register there is a penalty of a fine of up to $25,000. The majority of the committee felt very strongly that that was all that needed to be done. The reason is very simple. A reseller simply uses the facilities of a regulated monopoly, namely, New England Telephone to re-sell telephone time. It is not a natural monopoly. There is no reason why dozens of resellers can't be operating out throughout the state. Because they are not a natural monopoly, there is no need to regulate them as a public utility. There is ample precedence for this. Matter of fact, back in 1988 the legislature specifically exempted Cellular Mobile Radio communications stating that there was good reason to believe that that was an area which needed competition rather than regulation, and we believe the same thing happened here. What a reseller does is not totally unregulated, because they have to use the lines of regulated companies. They are going to be regulated in what they charge by the tariffs approved by the PUC and that is a point that has sort of been lost in this discussion. So keeping in mind that we have literally a horse and buggy definition of public utilities in this state, I have looked it up and it was first promulgated back in 1911 and since then it has been modified here and there to take out outmoded methods of providing services to the public. But, it is our job to keep up-to-date definitions of public utilities and that is simply what we are doing here. This is a very simple issue. I think that there has been a lot of side issues raised that have really clouded the question. We believe that this is a good pro-consumer bill designed to get government out of areas where they don't need to be.

SENATOR SHAHEEN: Like Senator King, I also think that this is a very complicated issue. There has been a lot of information on both sides and none of it is very clear. I would certainly agree with all of those people who have said that we need to deregulate the telecommunications industry in the state. I think that there is no question about that. The question is whether this bill does that in a way that is appropriate for the future competition within the telecommunications industry of the state of New Hampshire. I would argue that it doesn't, if you think about who we have heard from. I have heard from a number of telephone companies, from local exchange carriers, from other resellers, from the big people, GTE and NET. I haven't heard from anyone in the telecommunications industry who supports this bill except Atlantic Connections. I think that we have to ask the question of whether this is a bill that is really going to deregulate telecommunications in the way that we want to or whether it is going to be a bill that is going to benefit Atlantic Connections. The

other thing that I would just like to point out is that there is currently a competition docket that is being heard within the PUC, we expect a ruling out of that by the end of this month. It is going to address lowering access fees, increasing competition among the industry. I think that it is long overdue, but, I also think that it is going to deal with a lot of the problems and we shouldn't do it in a piecemeal way, right now.

SENATOR CURRIER: Senator Shaheen, can you, in one sentence, and I know that this is a complicated issue, but in one sentence, can you tell me what the bogeyman is in this bill, because the thing is, is that this is the same language that is commonly referred to in 32 other states?

SENATOR SHAHEEN: Yes, Senator, but what was missing from the information that pointed out that resellers have been deregulated in 32 other states was the fact that other aspects of the telecommunications industry have also been deregulated in 32 other states, but in fact, the bill that we are looking at now would not address other aspects of the industry, it would only deal with resellers, therefore, it is going to create an uneven playing field.

SENATOR CURRIER: An uneven playing field. I would ask, could you elaborate a little bit more on that, please? I am trying to get at why all of these little independent telephone companies, which we have 13 to 15 of in the state, are up in arms in regard this and it all hinges on this thing called the access fee. If you ask members of the PUC, they say that there is no reason for them to be worried about that because they have to pay the access fee. The court case involving this again, and I think that everybody is hanging their hat on this access fee.

SENATOR SHAHEEN: I didn't mention access fee.

SENATOR CURRIER: I know that you didn't. It was in the letters and all of the communications that we have received. Their amendments, those other companies that wanted, they wanted to make sure that access fees were addressed in other states legislation. So what is the level playing field, I mean are they afraid, those independent telephone companies, that they are going to get paid by a reseller if it was established in their backyard?

SENATOR SHAHEEN: Is this a would you believe?

SENATOR CURRIER: No. I am asking you a question. Is that what the bogeyman is here? That they are not going to get paid their fees?

SENATOR SHAHEEN: I am not sure what their bogeyman may be, in particular. I think the question that it raises is . . . what we are doing is we are creating a two-tier-system if we pass this bill. We are saying if you are a reseller you can go out and do anything that you want. You don't have any regulation. But, if you are a local exchange carrier or if you're somebody else who does business in the state of New Hampshire you have to be regulated. I am raising the question that if our goal is to truly deregulate, then I don't think that this bill does it, because it addresses only the resellers, part of that.

SENATOR CURRIER: Thank you.

SENATOR COHEN: Senator Shaheen, you mentioned that if we are going to have deregulation that it should be across the board. Are you suggesting that it is in the consumers best interest to deregulate a monopoly? I mean, isn't that what we have a Public Utilities Commission for, specifically to regulate a monopoly? And if we deregulate a monopoly, how is that going to help competition, how is that going to help the consumer?

SENATOR SHAHEEN: Isn't that in fact what we did when we broke up AT&T?

SENATOR COHEN: We are trying to move beyond that and help it right now to develop more competition.

SENATOR SHAHEEN: Right. And it seems to me that that is what opening up the industry to competition does. You don't do that if you say, one aspect in the industry is going to be open competition, but another aspect isn't.

SENATOR COHEN: It seems to me that monopolies have the tremendous advantage. They have 98 percent of the market right now. The last thing that we need to be doing is to deregulate them and thus wipe out any competition. If they are deregulated, then so much for competition. I guess that is a "would you believe?"

SENATOR SHAHEEN: But isn't that in fact what is being heard right now before the PUC?

SENATOR COHEN: Not to my knowledge.

SENATOR SHAHEEN: Yes, I believe that it is.

Question is on the committee report of ought to pass.

A roll call was requested by Senator Fraser.

Seconded by Senator Podles.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Lovejoy, Currier, Disnard, Roberge, Wheeler, Baldizar, Colantuono, J. King, Russman, Bourque, Hollingworth, Cohen.

The following Senators voted No: Fraser, Blaisdell, Pignatelli, McLane, Podles, Barnes, Shaheen, Delahunty.

Yeas: 15 - Nays: 8

The committee report of ought to pass is adopted.

Ordered to third reading.

SB 224-FN, an act relative to the statewide education assessment program to be funded through the regular budget of the department of education. Education Department. Split Vote: Ought to Pass with Amendment. Senator McLane for the committee. Split Vote: Ought to Pass with Amendment. Senator Disnard for the committee.

1813B

Amendment to SB 224-FN-A-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

relative to the statewide education improvement and assessment program and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Rulemaking Authority. Amend RSA 21-N:9, II by inserting after subparagraph (v) the following new subparagraph:

(w) The exemption of certain students from participation in the statewide education assessment.

2 New Chapter; Education Improvement and Assessment Program. Amend RSA by inserting after chapter 193-B the following new chapter:

CHAPTER 193-C

STATEWIDE EDUCATION IMPROVEMENT AND ASSESSMENT PROGRAM

193-C:1 Statement of Purpose.

I. Improvement and accountability in education are of primary concern to all of the citizens of New Hampshire. A well-educated populace is essential for the maintenance of democracy, the continued growth of our economy, and the encouragement of personal enrichment and development.

II. A statewide education improvement and assessment program built upon the establishment of educational standards specifying what students should know and be able to do is an important element in educational improvement. Such a program also serves as an effective measure of accountability when the assessment exercises or tasks are valid and appropriate representations of the curriculum standards that students are expected to achieve.

III. Widespread participation in the establishment of a statewide education improvement and assessment program is essential. Consultation with educators at all levels, business people, government officials, community representatives, and parents must occur in the development of educational standards. In turn, widespread dissemination of those standards, once established, must occur. Teachers, administrators, and school board members must be fully apprised of these state-developed standards. They must, in turn, communicate these expectations to students and parents, and find and implement methods to enable students to acquire and apply the requisite knowledge and skills.

IV. In addition, the assessment results must be reported to students, parents, teachers, administrators, school board members, and to all other citizens of New Hampshire in order that informed decisions can be made concerning curriculum, in-service education, instructional improvement, teacher training, resource allocation, and staffing.

V. A critical part of this program is the local education improvement and assessment plan. In order for an assessment program to give an accurate picture of student performance, it must include more than a one-time measure. Local school districts should devise and implement measures which focus on the continuing growth of individual students, and report the results to parents along with those obtained from the state-developed tool.

VI. The purpose of the statewide education improvement and assessment program is not to establish a statewide curriculum. It is, rather, to establish what New Hampshire students should know and be able to do and to develop and implement effective methods for assessing that learning and its application so that local decisions about curriculum development and delivery can be made.

193-C:2 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of education.

II. "Committee" means the oversight committee established to review the statewide education improvement and assessment program.

III. "Department" means the department of education.

IV. "Program" means the New Hampshire statewide education improvement and assessment program.

193-C:3 Program Established; Goals. There is established within the department of education a statewide education improvement and assessment program. In carrying out this program the department shall consult

widely with educators at all levels, business people, government officials, community representatives, and parents.

I. The aims of this program shall be to:

(a) Define what students should know and be able to do.

(b) Develop and implement methods for assessing that learning and its application.

(c) Report assessment results to all citizens of New Hampshire.

(d) Help to provide accountability at all levels.

(e) Use the results, at both the state and local levels, to improve instruction and advance student learning.

II. Since the program is not a minimum competency testing program, assessment instruments should be designed to reflect the range of learning exhibited by students. The assessment portion of the program shall consist of a variety of assessment tasks which can be objectively scored. The assessment instruments shall include, but not be limited to:

(a) Constructed response items which require students to produce answers to questions rather than to select from an array of possible answers.

(b) A writing sample.

(c) Other open-ended performance tasks.

III. The following criteria shall be used in the development of the program:

(a) Educational standards specifying what students should know and be able to do shall be clearly defined before assessment procedures and exercises are developed.

(b) The assessment exercises or tasks shall be valid and appropriate representations of the standards the students are expected to achieve.

(c) At each grade level assessed, the standards and expectations shall be the same for every New Hampshire student.

(d) Teachers shall be involved in designing and using the assessment system.

(e) Assessment frameworks and reports shall be understandable and widely disseminated to parents, teachers, administrators, other school personnel, school board members, teacher preparation programs, business people, government officials, and community members.

(f) The assessment system shall be subject to continuous review and improvement.

IV. The assessment system shall generate data which may be used:

(a) At the student level, by students, parents, and teachers, to determine what the student knows and is able to do in relationship to the state-established standards.

(b) At the classroom and school building levels, to monitor student progress and to enhance learning.

(c) At the district level, to measure school and district-wide progress toward meeting goals and outcomes, to revise curriculum, to design in-service education programs, and to improve instruction.

(d) At the state level, to measure what students know and are able to do in relation to the attainment of goals and outcomes from the assessment frameworks, and to report the results to the citizens of New Hampshire.

(e) At the state level, to target services to schools, improve existing programs, develop new initiatives, and revise standards for school improvement, teacher certification, etc.

(f) At the college level, to integrate into teacher preparation programs instruction in state-established standards, techniques for enhancing student learning in these areas, and the use of assessment results to improve instruction.

(g) At all levels, to correlate, to the extent possible, with national goals and international standards.

(h) At all levels, to provide a basis for accountability.

193-C:4 Rulemaking. The state board of education shall adopt rules, pursuant to RSA 541-A, relative to the exemption of certain students from participation in the program.

193-C:5 Areas of Assessment. The academic areas to be assessed shall include, but not be limited to: reading and language arts, mathematics and science, and history and geography.

193-C:6 Assessment Required. Each year, a statewide assessment shall be administered in all school districts in the state in 3 grades: an elementary grade, a middle or junior high grade, and a high school grade. All public school students in the designated grades shall participate in the assessment, unless such student is exempted. Home educated students may contact their local school districts if they wish to participate in the statewide assessment. Private schools may contact the department of education to participate in the statewide assessment.

193-C:7 Oversight Committee. An oversight committee shall be established consisting of:

I. The chairperson of the house education committee, or a designee.

II. The chairperson of the senate education committee, or a designee.

III. One member of the house of representatives, appointed by the speaker of the house.

IV. One member of the senate, appointed by the senate president.

V. One member of the house appropriations committee, appointed by the speaker of the house.

VI. One member of the senate finance executive committee, appointed by the senate president.

193-C:8 Duties of the Oversight Committee. The oversight committee shall review the development and implementation of the program to ensure that they are in accordance with legislative policy. Implementation of the program shall require committee approval.

193-C:9 Local Education Improvement and Assessment Plan.

I. Each school district in New Hampshire is encouraged to develop a local education improvement and assessment plan which builds upon and complements the goals established for the program, including:

(a) Local assessment measures which focus on individual student performance.

(b) Participation in the program.

(c) The use of local and statewide assessment results to improve instruction and enhance student learning.

(d) Methods for reporting the results of all assessment measures.

II. This plan may be submitted to the department of education for review. The department shall provide technical assistance at the request of the school districts in developing and implementing these assessment plans.

III. In addition, local school districts are encouraged to submit to the department of education information relating to:

(a) Methods of instruction which have proven to be effective in helping students reach the state-developed standards.

(b) Methods of assessment which have proven to be effective in assessing what students know and are able to do.

IV. In accordance with RSA 21-N:6, VII, the department shall develop a system whereby such information can be collected, compiled, and disseminated to local school districts.

3 Appropriation. The sum of $120,000 for the fiscal year ending June 30, 1993, is hereby appropriated to the department of education for the purpose of funding the statewide education improvement and assessment program under RSA 193-C inserted by section 2 of this act. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

4 Appropriation. The sum of $225,000 for the fiscal year ending June 30, 1994, and the sum of $675,000 for the fiscal year ending June 30, 1995, are hereby appropriated to the department of education for the purpose of funding the statewide education improvement and assessment program under RSA 193-C. The governor is authorized to draw his warrant for said sums out of any money in the treasury not otherwise appropriated.

5 Repeal. 1992, 289:58, relative to the oversight committee, is repealed.

6 Effective Date.

I. Sections 1-3 and 5 of this act shall take effect upon its passage.

II. Section 4 of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill establishes the New Hampshire statewide education improvement and assessment program, sets forth criteria for the development and implementation of the program, and makes appropriations to fund the program through fiscal year 1995.

SENATOR MCLANE: I am going to speak to amendment #1813 which is the House version of the assessment issue and as a result of a long study. I am going to start and I am going to end with two farm analogies. The first one comes from a farmer in West Stewartstown who was raising pigs and he weighed them every morning. Suddenly one day someone pointed out that if he fed them instead of weighed them, they might gain some more weight. I look at this issue in that regard. The issue of testing doesn't make kids any brighter. New Hampshire is last in state aid to education. If we tripled the amount of money that we put into local schools we would still be last,behind Mississippi, which is at 24.9 percent. We are at seven. There are many, many communities in New Hampshire that receive no money at all. Despite my great respect for George Disnard who is an educator and a superintendent, I find that we come to a whole difference in philosophy here. It seems to me that his side and his amendment are saying: the schools are wrong, let us test it and prove it. I look at the problems that schools are having today. I grew up in a local New Hampshire community. I went to Hanover High School and I always thought that it was the best education that I possibly could have received. But things in schools are different today. We never had handicapped kids in our schools, we never had blind kids or deaf kids, or kids in wheelchairs. I don't know what happened to them then, but they weren't there for our teachers to deal with. Mothers didn't work back in my day, but today over 50 percent of the children that go into first grade, have two working parents. Kids grow up on tv. They start daycare at six weeks. The number of children coming from single parent homes is appalling. We have a school in Concord, West Concord where there are a lot of apartment buildings. Over 70 percent of the children in that school come from single parent homes. Schools have problems and why testing has become the great testing ground, I fail to understand. But we are dealing here with two philosophies, George Disnard's amendment and the amendment of the House Education committee. It seems to me it is a difference between the words 'testing or assessment'. In the beginning these bills dif-

fered in great ways. The Lovejoy, Disnard bill talked about machine correcting. They asked for multiple choice questions and they did not mention essay questions. They insist on using third grade and naming the grades, whereas the other bill talks about elementary schools and secondary schools and makes it possible to fit into national standards that are going to test fourth grade next year. The original Lovejoy bill had no money in it and what they were saying to the State Department of Education was 'you figure out a test and test them and take it out of your secretaries salary or whatever'. But I think that we learned in the debate the other day, that if you even insist that a local community publish a piece of paper, the state has to pay for it and now both bills do have the money in them to start this program. The original Lovejoy bill and this amendment talk about National and International standards for these tests. The House version calls for local school boards and local communities and a New Hampshire assessment program. Then the final question comes of oversight. Do we have a committee of legislators assigned to look over this assessment program that we are passing after it has been made by the State Board of Education or do we have a committee of political appointments? That is a difference remaining in the bills. I think that I look at it this way; whose side are you on, the teachers, the state education people, the school boards, the kids, or are you on the side of the critics of our New Hampshire schools? I would ask a question of them; when you finish with all this assessment business, what are you going to do? Are you going to give more money to the bad schools or money to the good schools, more money to the property schools or more money to the property poor schools? What I am saying is that you are putting this bill in, rather than give any money to the schools in New Hampshire which are hurting. So I look at it as the George Lovejoy bill on one side, the Granite State taxpayers who have written us all and have put a letter in my local paper, and the educators, and the kids on the other side. I said that I would start with the farm analogy and I will end with one. I look at the Lovejoy bill as it originally started out and despite its changes, I would say that, "you can't make a silk purse out of a sow's ear." So I would ask that you vote for the amendment that has been carefully worked out by the House.

SENATOR DISNARD: I am rising to support amendment #1879. Susan started with a joke and ended with a joke and she said something about a sow's ear and she keeps talking about the Disnard and Lovejoy amendment. I don't know what she is saying. But let's face it, members of the Senate, the first time in my seven years as a member of this Senate, that before a House bill was passed the House bill has ended as a amendment to a Senate bill. What we are saying in my opinion is, "the heck with Committee of Conferences, the heck with the legislative process, we are going to do it one way or another" and I object to that. Senator McLane has been very polite and I appreciate that and I will use the same standards, if I don't you can shake me. Yes, it is a difference in philosophy. It is a difference in the bills and I would like to address the differences, especially the grades three, the oversight, the private schools and the assessment. Let's face it, we are politicians, we know that the people out there do not trust politicians, very evident to the state, county and the local level. I am also aware that with 24 years as a school superintendent, 28 years in the school central office, thanks to the present and past Presidents, Chairman of the Senate Education committee and it was my job to know the pulse of the people, to get budgets passed. I accept the fact and I hope that you accept the fact, that the people out there are not sat-

isfied with the public schools and they are not trusting the public schools. That is what I am getting to on the Oversight committee. The Oversight committee that the House bill refers to is legislative oversight. The Oversight committee that this bill, and by the way, I wouldn't call it the Lovejoy or the Disnard bill, I would call it the Commissioner's bill. Fifteen changes in here suggested by the Commissioner of Education, how would you interpret that? However, take a look at the Oversight committee makeup in your bill, the Senate's version. In the Senate version we have an Oversight committee, Chairman, the House of Education, the Education committee, the Chairperson of the state Senate Education committee, the Chairperson of the State Board of Education, the Commissioner of the Department or his designee, two public members appointed by the Governor, a New Hampshire school counselor appointed by the New Hampshire School Counselor's Association, an elementary and a secondary teacher are appointed by the New Hampshire Association for Supervision and curriculum development. Which of those Oversight committees do you think the public would have the most faith and the most trust in, the Oversight committee, controlled by the legislators or an Oversight committee made up of legislators, those who are working with the testing, the public, hopefully the parents, guidance counselors? Now I would like to call your attention to an item that I was going to save until the end, but I am going to start off with it. Legal opinion. There is a serious question regarding the Constitutionality of this delegation of authority in the House bill to a legislative committee. I would like to have you turn to page 559 at the bottom and page 60. The Supreme Court opinion is that the legislature cannot do this. The legislature cannot pass on to a smaller group of legislators, oversight. Now we have some attorneys here, I don't know if Senator Colantuono or Senator Russman wish to address this, I know that this is new to them. But I would hope that they would read it. I have been told, and the Oversight committee as you look at it in the House, and that is where the difference is in the Senate bill. The Senate bill thinks that the Department of Education is in charge of education in this state, they should develop and implement the assessment program. It should not be developed and approved by a group of legislators who are not that familiar with education. That is a very important item. Once again, who would the public trust? Let's face it, the people in this country and this state want to know what should their students learn? Are they learning? If they aren't learning this, what can be done at the local level maybe through the budget process or whatever, how can they develop at the local level with local funds and local control which the Senate bill has, assessment programs other than this one specific assessment program that is in this bill. The Senate bill calls for all types of assessments to be developed at the local level. Now Senator McLane mentioned about the assessment bill contained in the Senate bill, one specific item. How are we going to know what our students learn, what should they learn, and are they learning, without an assessment bill, an assessment type vehicle that questions everybody in the same way and in the same manner and with the same questions? We should be able to know and the parents should be able to know. The local school board should be able to know. The State Board should be able to know. These questions are all asked in the same way, one type of assessment. The same questions in every community and in every state. We would know how we compare, where we need to improve. Now are you aware of the fact that there is already a program? It has been developed for third grade math and language arts. It will be administered on a pilot pro-

gram this spring. It is serving the third grades on what the students should know. This instrument is a blended instrument, multiple choice, and this is what the opposition does not like. There are 32 math questions and 32 language arts program questions. Whether you believe it or not, there are three questions in every area and each discipline. The math, the language arts, but the answers must be written out. You didn't get that information. Also, it asks for a writing sample. Again I repeat, take a look at the type of assessment and what we are looking for and how you can compare, and should we compare? Again, it does not take anything away from any area at the local level to develop its own assessment instruments. It encourages assessment instruments at the local level developed by the local group. However, when you have this machine score test you don't have the problem that the state of Vermont has. The state of Vermont has some assessment tools. They had the Rand Corporation come in and review how this was working. The Rand Corporation told them that it was a waste of money and it wasn't working because every school district, almost every teacher reviewed the portfolios of the students in a different method. Now how can you compare buildings in a community, how can you compare one district to another if nobody has the same type of evaluation criteria. That is why it is important for us to know this. Another difference is grade three. The Senate bill calls for grade three which the state is doing, that is what we are spending our money on and an exit grade, at the end of the so-called, whatever the middle school is, and high school. The Senate bill does not write everything in the legislature. The State Department of Education should not be told everything that they should do to develop an instrument. They should be allowed to do it; however, educators that I talked to at the elementary school are of the opinion that at the end of the primary grade situation, first, second, and third, is the most important end grade in the elementary system of the entire school system. The third grade. We think that the test should be at the end of the third grade. I have several things that have been passed out to you. I wish that you would take the one that is 8 x 11 that is up and down and says grade three. Just look at the concept. The student will understand the concept of numbers. The student will understand the concept of addition of whole numbers. The student will understand the concept of subtraction, the concept of multiplication. I could go on and on and on. Concept. If we wait until the fourth grade to start testing these students in the spring, it is going to be too late to learn the concept. We know because we have talked for years at home and at the local schools and in the legislature, when shall we stop and prevent and help dropouts. We spend hundreds of thousands of dollars on reading programs that the present Senate President enjoys and likes to try and prevent the dropout. We need to know at the end of the third grade, do the students have the concept of the english language, arts and the math? Just an example, so that the problems and abbreviations can be corrected. We have some other situations and differences. Right now within the schools systems in this state, we have 175,000 public school students. We have 18,000 non public school students in the 1991 figures and those are approximately. The Senate bill says, if non public schools, private schools in a community wish to be involved in the assessment program, developed by the state, paid by the state, the Senate bill said that they should pay for that. At the request of the Commissioner of Education. The House bill says no, the state should pay for it. Do you realize that each one or these tests costs an average of $14? Do you realize that if we have three grades being tested after three years at the pilot pro-

gram, theoretically, that is a fourth of our students. What we are saying is 4,500 or 5,000 students in private schools and if they all wish to take advantage of this program, it is going to cost over $70,000, close to $70,000. Why should the private schools be paid by the state for these tests? These are all important areas which I wish to point out to you. I could go on and on and on. Local control is important. It is local control. We need a situation where we really know what the students learn. We have to have an equal type of assessment program. We need to know if the students have basic knowledge. Also, the Senate version in areas such as math, want to know if the students are basic skill levels, efficiency levels, or advanced levels. The state of New Hampshire last year or the year before, I think that it was last year, went to a National program and had the eighth grade students in New Hampshire measured for ability. They came out with the skill level, that is the bottom level. We didn't have hardly any at the efficiently level and hardly at the advanced level and that is the information this morning from the State Department of Education. I won't go on and on, I could go on and on. I know that you all want to go home. I pointed out the areas to you. I called for the fairness issue on a Senate bill not being changed into a House bill in the Senate. I ask you to vote down the first amendment which is the House bill and I ask that you support the Senate. Thank you.

SENATOR LAMIRANDE: Senator Disnard, I know that this probably won't start off sounding like a question, but it is going to evolve into a question. I am sure, and I feel very confident that every Senate member here, main concern is the benefit of the student. Can you tell me, and I will ask the same question of Senator McLane, in 25 words or less, why your Senate bill is better than the proposed one of Senator McLanes. For the benefit of the student?

SENATOR DISNARD: Okay. Local control is for the benefit of the student. We would know exactly what the student in each school district compared to other school communities, other states, what they should learn, are they learning it and if they aren't learning it. What can we do to help those students learn it, which is going to prevent dropouts and we will have a better educational system. The local school district, I know 25 words or less, I am sorry, the local school district then will be able to develop its own testing instruments from the state assessment program to determine what their students are lacking in, individually, or as a group how they can be improved and how the structural curriculum can be changed.

SENATOR LAMIRANDE: Thank you.

SENATOR MCLANE: How can you have local control when state national and international assessment programs are thrust on local communities?

SENATOR FRASER: Senator Disnard, I have to apologize, I came in earlier on your testimony, but I didn't hear all of it. Is there . . .

SENATOR DISNARD: Do you want me to repeat it?

SENATOR DELAHUNTY: No!

SENATOR DISNARD: For a vote, Senator, I would be glad to repeat it.

SENATOR FRASER: Is there any financial burden on the local communities?

SENATOR DISNARD: Absolutely not. The state is paying for the assessment. The state will pay for technical assistance to communities if they wish to improve their programs or to change their programs. The communities benefit. There is no cost to the communities. Even if the local private school, if that is changed in the Committee of Conference or something, the state pays for that. There is no cost but only benefits to the local schools.

SENATOR FRASER: Thank you, Senator.

SENATOR BALDIZAR: Senator Disnard, I want you to know that I respect all the dedicated years of service that you have put into education in this state. I would just like to ask you if we do this is this going to enable the state to fully fund Augenblick? Is it going to help my community in Nashua that does not currently receive funding and the greater Nashua area?

SENATOR DISNARD: It has nothing to do with Augenblick, separate funding, I think that it is $220,000 this year and whatever it is in the second year and it would be $1 million in the fourth or fifth year. Susan and I heard that at a little meeting that I tried to get the understanding of. No, it has nothing to do with Augenblick, it won't take any money away. The money is already in the budget. The money was appropriated last year and most of it was released a week ago to pay for the bids which the state department has for the spring testing in grade three. It has nothing to do with Augenblick and it will not change Augenblick. I am familiar with Augenblick as much as anyone in this room. It will not affect the Augenblick or foundation aid, which is the same thing. In fact, Senator, it could help the Nashua and Manchester area where the votes are here today, because if the local school districts through the state assessment program find out that they need more help, additional help, then the legislative body TAPE INAUDIBLE, five votes right there are going to be able to convince the legislature that more money should be available to foundation aid.

SENATOR BALDIZAR: Senator Disnard, do you believe that Senator McLane's' amendment would also do the same thing?

SENATOR DISNARD: Ma'am, I am not knocking Senator McLane's philosophy. I am just saying that this is a better bill. This is going to help everybody. Her bill will probably do the same thing in answer to your question? No.

SENATOR BALDIZAR: Thank you, Senator.

SENATOR COLANTUONO: I am glad that the last question listed is to talk about the money because I think that it is important that everyone knows that we are spending $1 million on either version of this bill for the next several years. I am concerned about the results which either of these programs would give in terms of public information. I am reading in your version, a mandatory requirement that rules be adopted regarding a reporting system to be distributed to parents, teachers and so forth, so I have confidence that under your version the parents who are the taxpayers and the people who have children in the schools will know how their children are doing. Does the other version have that same guarantee, because the reason that I am asking is that I am looking at page four, IV, which says, "the assessment system shall generate data which may be used"?

SENATOR DISNARD: I think that you are right. I don't think that the other bill, the House bill will do it to that extent. I think that there are some concerns in the other bill by the drafters. Should the parents I think that there was a concern, shouldn't the parents know what their students are doing? Shouldn't the parents know what their grade level and class is doing with their students? Shouldn't parents and the voters in the community know how their school compares with another school? Should they be aware of how their school compares to the rest of the state? That could be helpful in the budgetary process? I think that our bill does that and the other one doesn't.

SENATOR BLAISDELL: Senator Disnard, you know how I feel on oversight, so I guess you know where I stand on that. You have talked about public trust in your speech. Would they check with the people, who would they trust? Did the people of this state trust 24 of us in this room for the public trust when we became state Senators?

SENATOR DISNARD: Senator, you didn't listen to me or you didn't understand what I said. I said, which would the public have more faith in, an oversight committee compiled of teachers, guidance counselors, parents, some legislators, and whatever else is in there or just an oversight committee of legislators? I didn't imply and I didn't state that the public didn't trust you or me as individuals. I am saying that the public doesn't trust politicians. And if we don't show them as a state Senate or as a legislature or New Hampshire that we want to improve education and that we want them to be involved to get them with us, because if they feel that they are part of the action, they will support it. That is what I am trying to say.

SENATOR BLAISDELL: You sound like a superintendent right now, Senator Disnard.

SENATOR DISNARD: I never lost a budget.

SENATOR LOVEJOY: Senator Disnard, I certainly respect so much your outstanding career in public education, your outstanding career as a state Senator, bringing that common sense root value of education to the Senate. And who, I might ask the Senate, is better qualified to recommend education values and how we achieve educational progress in this state than to listen to a career educator? Senator Disnard, you have done such a good job and I personally compliment you for it. The citizens of this state owe you a great debt. The children of our public school system owe you a great debt and God willing you sir, when . . .

SENATOR DISNARD: Can I have you come to my district if I run again?

SENATOR LOVEJOY: I sure will. Let me tell you that if the Senate bill is adopted, then we will have taken a first step and a breath of fresh air in improving the quality of education in the state of New Hampshire. Now let me tell you, if I may, that for three years, a committee of 27 people have been meeting. They have spent thousands of hours meeting and developing a program of student assessments, 27 people for three years. They have made a report and SB 224 is a mirror of that report. It is the result of that report. The House bill is not. Let me tell you too, that that committee was made up of members of the State Board of Education, made up of people from the Department of Education, made up of educators and made up of citizens and of professional people. Their assignment was to report and to implement a statewide educational assessment program. This bill, I repeat, SB 224 is a mirror of that report. Let me tell you too, that the State Board of Education has voted to a person,

not one dissenting vote, and I think that that is probably the only issue that faced this State Board of Education, that didn't have one dissenting vote, voted in favor of supporting SB 224 and they testified to that fact during the hearing. And let me tell you too, that the Department of Education in testimony on this bill concurred with the State Board of Education. So those two bodies as many times as they have been apart, came together on this issue. Let me say this, Mr. President, that statewide assessment of our students must precede any changes designed to improve our education in New Hampshire. This bill, SB 224 is a pro-education bill. It is not a status quo education bill. It sets the stage for great changes in our education product. It is intended to put into place a method of learning from our students, the levels of acquired knowledge and skills that we are imparting to them as products of our educational system. I repeat that the statewide assessment testing must precede any other changes designed to improve our educational system. Our children need this. Our society demands it and our perpetuity as a state and as a nation, requires it. Statewide assessment testing will provide us as parents, as educators, as legislators, and as citizens with the benchmarks that we need to see that New Hampshire students have the best opportunity possible to go out into a competitive world with the knowledge and the skills necessary to compete and to achieve. SB 224 calls for testing in three grades as Senator Disnard said. Those are defined as exit grades, grade three, they are supposed to have acquired their basic skills, grade six, the last of the elementary grades and they are going into the middle school and grade 10 which gives you two years to eliminate any problems that may surface. We may be able to save some of those who would dropout otherwise. Now New Hampshire is, contrary to what you may have heard, it has been a very generous state when it comes to spending on education because here in New Hampshire, we currently spend more money per pupil than do 35 other states in the nation. That means that New Hampshire taxpayers spend more money per pupil than most taxpayers in the world. Now in a recent comparison, New Hampshire teachers salaries ranked 25th in the nation, right in the middle. Our spending in education in New Hampshire in 1991 was a $100,81,000 an increase of nearly 100 percent in the five year period from 1985 to 86. As Senator Disnard said, "we have almost 175,000 students in our public schools". That is an increase of eight percent during that same period. It costs us $89,300,100,000 to administer our 65 SAU's and that is an increase of nearly 7 million in a one year period while the student population grew by just two percent and yet we have no methodology in place to see just how well our students are acquiring knowledge and skills from that system. We must have accountability for performance. We must prove dollar value and we must have desktop results. These goals are proeducation and I plead with you to let us work together to correct the problem that exists. Senator Disnard referred to open-ended testing, portfolio testing that they have done in the state of Vermont. It has proven to be a classic failure. I will pass out an article from Education Week, a recent article that points out that failure. Portfolio testing that the amendment would allow does not work, and it has not worked, and it would be a threat to our educational problem here in the state of New Hampshire. I urge you not to get it involved in that maze that Vermont did, that cost money and did not prove results. Senator McLane in her very passionate testimony and was very pined, and we continue to take that tack, started her testimony talking about handicapped children and blind children and children of working parents and single parent homes

and we all certainly empathize with that, and I share your concerns, Senator, greatly in each one of those cases and in every individual case in those catagories; however, let me say that that has nothing to do with the question that is facing us, which of these two bills are going to provide the necessary data that we need to improve the education in the state of New Hampshire and that is what we are trying to do. I had no idea when I introduced this bill originally, that we were going to have some kind of a 'hurray' over statewide testing when the end result of that is to improve education. When we looked at the House bill that had been approved, we found that that House bill did not meet the requirements set forth in the 27 member study on the statewide assessment testing. So we introduced the bill that reflected the report of that committee and that is what our bill does. Senator Disnard and his Education committee then further refined it and did a fine job. We certainly urge you, for the good of our children in the state of New Hampshire, to put politics aside. Let's put personalities aside. Let us put everything aside except the good of our children. Bliss, fine, and let us believe and let's vote on what is going to do the very best to improve the education here in the state of New Hampshire. I think that when you do that you will support the Senate bill and vote in favor of that. I thank you very much.

SENATOR HOLLINGWORTH: I am not going to be long because I know that everybody feels strongly about this and I couldn't agree more with what the last speaker said about the good of our children. I think that is precisely what the House did for the last year and half, cared about the good of our children. They met with everyone that they could have met with and they held hearings and they researched the assessment area and what they should do in testing. They talked to everybody that they could find. They worked extremely hard to try and make sure that the good of our children was protected. That is why I would ask you support the McLane amendment. George mentioned that he didn't know that, history he hadn't seen only but twice, that a House bill coming over here that the Senate, we took the whole bill and placed it on the Senate bill. Well I have been around for awhile and I am getting old too, and I remember those things happening. In fact, this body, just recently, took the stalking bill which was a Senate bill, and we put it on the table to wait for what was the House bill because it was so much better. We recognize the fact that the House has a bigger number of people and that they work very hard and that they work long hours over the years to try to take and come up with a piece of legislation that is right. So I have no problem at all in passing the House's amendment. I respect the House's Education committee. I think that anybody who served in the House over the years knows that Representative Skinner and her committee worked untold hours to do nothing but protect the good of our children. This constitutionality question, I am a little bit familiar with this because last year I was involved with rules where this kind of came up. What this is about is not having an oversight committee at all. What this is, is that in fact if you look to page 552, I am not sure how these pages are lettered, but there is a section and it says, "it may not delete its legislative authority", an oversight committee doesn't delete its oversight committee, and if it did, then none of our oversight committees could do that. This body is not taking any powers away from the legislature. So I think that unfortunately, this constitutionality or this question that George raised has absolutely nothing to do with what is before us today. Trust. All of you remember last year when the Board of Education was going to remove the standards in education. They wanted to remove the numbers of children

that could be in the classroom. That same board, lacked all kinds of credibility and all kinds of trust. Who had credibility? The elected officials from our school boards and elected officials from this body and the House. The reason is because we are elected and the public knows that we can be taken out in one more election. So yes, I have faith in the elected people. I think that that is the way that we should be going and I have no problem at all since there has been input to the House from all of those people that George mentioned in his assessment. The grade three, every single expert has said grade three is a wrong grade. In fact, next year the feds are going to come out and they are saying grade four, and yet in the face of all that and knowing all that, it seems impossible for me to accept the reality of the group that came out and opposed education that is trying to cut at every local school board and every town and community education, that same group is supporting the Lovejoy and Disnard amendment. Now those people don't want to spend your tax dollars on education, and yet they are in here saying 'oh give local control' where you know the fact and the truth is, is that group doesn't want to put any money into education. The idea to say that the state of New Hampshire is generous with our education is absolutely unbelievable to me. We spend seven percent on aid to education on the state level and we are a state with no mandatory kindergarten. Forty percent of our communities do not have kindergarten in this day and age. It is that same group that has supported those kinds of lack of support by state and local governments, the ones that are asking you to pass this Disnard, Lovejoy amendment. I would ask you to support the McLane amendment. I think that it is vital and important to all of our children in this state.

SENATOR COLANTUONO: With regard to the constitutional question, Senator Hollingworth, that you raised . . .

SENATOR HOLLINGWORTH: No, I am not a lawyer.

SENATOR COLANTUONO: No, but I know that you know a lot about this because of the rules committee and I know that you know that this case establishes the proposition that when legislation grants to a small legislative committee the right to approve a certain program, that is what this case says. I want to direct your attention to the bottom of page four in the calendar, the very bottom where it says, "the duties of the oversight committee". The last sentence says, "implementation", and this is the McLane amendment, "implementation of the program shall require committee approval", so it is not just oversight, they have to approve it, so doesn't that run afoul of this constitutional provision?

SENATOR HOLLINGWORTH: No, I don't. I don't agree with you. I think that was specifically when you had the legislature acting on preventing the rules from going forward and vetoing the rules. I don't think that it has anything to do with this case. In fact, if that was the case, then all legislative oversights would be unconstitutional.

Senator Blaisdell moved the question.

Adopted.

Question is on the committee amendment #1813.

A roll call was requested by Senator Lovejoy.

Seconded by Senator Blaisdell.

The following Senators voted Yes: Lamirande, W. King, Fraser, Currier, Blaisdell, Baldizar, Pignatelli, McLane, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: MacDonald, Lovejoy, Disnard, Roberge, Wheeler, Colantuono, Podles, Barnes, J. King, Russman, Delahunty.

Yeas: 12 - Nays: 11

Committee amendment #1813 is adopted.

1879B

Amendment to SB 224-FN

Amend the title of the bill by replacing it with the following:

AN ACT

relative to the statewide education assessment program and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. New Hampshire is committed to and supports the concept of local control of public education. The data from this statewide assessment will allow citizens at the local level to make informed and intelligent decisions regarding the staffing, programming, resource allocation, and financing of their public schools. Results of the statewide assessment shall not be used as criteria for state approval of any public school system which participates in the statewide assessment program.

2 New Subparagraph; Rulemaking Authority. Amend RSA 21-N:9, II by inserting after subparagraph (v) the following new subparagraph:

(w) The statewide education assessment program under RSA 193-C.

3 New Chapter; Education Assessment Program. Amend RSA by inserting after chapter 193-B the following new chapter:

CHAPTER 193-C

STATEWIDE EDUCATION ASSESSMENT PROGRAM

193-C:1 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of education.

II. "Department" means the department of education.

III. "Program" means the New Hampshire statewide education assessment program.

IV. "State board" means the state board of education.

193-C:2 Program Established; Goals.

I. There is established a statewide education assessment program to measure students' knowledge, skills and their ability to apply skills. This statewide assessment program shall be content and skill based, including a writing sample.

II. The goals of this program shall include:

(a) Providing a measure of accountability of public schools that provides reports to parents, school officials, and all of the citizens of New Hampshire.

(b) Providing reports to the communities on their schools.

(c) Providing correlation of this program, to the extent possible, with national assessment programs and goals, in the event such national and international assessment programs and goals are implemented.

(d) Evaluating education productivity and academic excellence.

(e) Providing school districts with educational planning data.

(f) Providing bench marks which identify the basically competent student, the proficient student, and the advanced student in each core curricular area. These bench marks shall correlate, to the extent possible, with those bench marks created by national and international assessments.

193-C:3 Rulemaking. The state board shall adopt rules under RSA 541-A relative to the statewide education assessment program including, but not limited to:

I. Type of assessment instruments.

II. Assessment scoring mechanisms.

III. Evaluating assessments.

IV. A reporting system to be distributed to the parents, teachers, principals, school districts, and citizens of New Hampshire.

V. Integrating the national and international standards for assessment into the New Hampshire statewide assessment program.

193-C:4 Areas of Assessment. The academic areas to be assessed shall include, but not be limited to, reading and language arts, mathematics, science, history, and geography.

193-C:5 Assessment Required. All public school students in grade 3, a junior high or middle school grade, and a high school grade shall take the assessment tests annually in the spring of each school year, unless such student is exempted by the department in conjunction with the state board of education. Private school and home educated students may contact their local school districts if they wish to participate in the statewide assessment program. Costs for participation in the program by private schools shall be borne by the private school.

193-C:6 Oversight Committee for Statewide Education Assessment Program. There is hereby established an oversight committee for the statewide education assessment program under this chapter. The oversight committee shall consist of:

I. The chairperson of the senate education committee.

II. The chairperson of the house of representatives education committee.

III. The chairperson of the state board of education.

IV. The commissioner of the department of education or a designee.

V. Two public members, appointed by the governor.

VI. A New Hampshire public school guidance counselor, appointed by the New Hampshire School Counselors Association.

VII. A New Hampshire public school elementary teacher, appointed by the New Hampshire Association for Supervision and Curriculum Development.

VIII. A New Hampshire public school secondary teacher, appointed by the New Hampshire Association for Supervision and Curriculum Development.

193-C:7 Duties of the Oversight Committee. The oversight committee shall:

I. Monitor and review the statewide education assessment program.

II. Submit a quarterly report to the senate education committee and the house of representatives education committee, indicating the progress and current status of the statewide education assessment program.

4 Appropriation. The sum of $120,000 for the fiscal year ending June 30, 1993, is hereby appropriated to the department of education for the purpose of funding the statewide education assessment program under RSA 193-C inserted by section 3 of this act. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

5 Appropriation. The sum of $225,000 for the fiscal year ending June 30, 1994, and the sum of $675,000 for the fiscal year ending June 30, 1995, are hereby appropriated to the department of education for the purpose of funding the statewide education assessment program under RSA 193-C. The governor is authorized to draw his warrant for said sums out of any money in the treasury not otherwise appropriated.

6 Repeal. 1992, 289:58, relative to the oversight committee, is repealed.

7 Effective Date.

I. Sections 1-4 and 6 of this act shall take effect upon its passage.

II. Section 5 of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill establishes the New Hampshire statewide education assessment program, sets forth criteria for the development and implementation of the program, establishes an oversight committee, and makes an appropriation to the department of education for fiscal years 1993-1995.

The program annually evaluates student achievement in at least 5 subject areas for grade 3, a junior high or middle school grade, and a high school grade. The results shall be made available to all citizens of New Hampshire in order to provide accountability of the public school system.

This bill also repeals the legislative oversight committee established under 1992, 289:58.

Committee amendment #1879 fails.

Ordered to third reading.

INTRODUCTION OF GUESTS

SENATOR HOUGH (In the Chair): We have a very distinguished guest visiting us today. It is with great pride that the Chair once again, introduces the British Consul General, John Owen to the Chamber.

CONSUL GENERAL JOHN OWEN: Mr. President, thank you for your welcome and thank you distinguished Senators for again for the warmth of the welcome in which you have extended to me today as you did when you did last year. I am delighted to be here to listen to this debate on education. This debate is reflected throughout Britain at the present because our educational system and its ability to allow our children to achieve their potential is a key to the future of both our countries. I am also very pleased to be here at the time when a British company, Sulteck Limited has said that it is going to go to Pease. I am delighted with that because that is of course a reflection, I think, Mr. President, on the business climate which has been created in the state of New Hampshire. Because it is a public, private partnership and companies do not take decisions lightly to go and locate in a particular part of the world. At the end of the day we are both trying to create jobs. In Britain at present, we are probably six months to nine months behind you in the state of economic recovery. But economic recovery has started. Our manufacturing output is now up by six percent and our inflation is the lowest that it has been since 1967 and our interest rates are the lowest since 1977, but our employment is still 3 million. We are both, I think, concerned about jobs and the only way that we are going to get jobs is through private companies, starting up companies in Britain and in the state of New Hampshire and the United States. And to do that it has to be a public, private partnership and the right climate for companies to grow. But not just the companies, but for the communities and the states to grow as

well. I do believe it is a partnership. Thank you very much for welcoming me here today and giving me the opportunity of saying a few words. Thank you very much.

SB 218-FN, an act relative to the child protection act. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1730B

Amendment to SB 218-FN

Amend RSA 169-C:6, VI as inserted by section 3 of the bill by replacing it with the following:

VI. [Any] ***The*** court having jurisdiction over a child who appears to be [neglected or abused] ***abused or neglected*** and in imminent danger may[, upon the request of the bureau or police officer,] issue [an order, which may include an] ex parte [order,] ***orders pursuant to RSA 169-C:6-a,*** permitting the child ***or the alleged perpetrator*** to be removed from the home ***at the request of the division or a law enforcement officer.***

Amend the introductory pargraph of RSA 169-C:6-a, I as inserted by section 4 of the bill by replacing it with the following:

I. The division or law enforcement officer requesting the court for an ex parte order shall, to the extent known, present the following evidence in writing with sworn signature or orally under oath:

Amend RSA 169-C:6-a, I(e) as inserted by section 4 of the bill by replacing it with the following:

(e) The names and addresses of custodial parents, non-custodial parents, legal custodians, other legal guardians of the child, and any other person responsible for the welfare of the child at the time of removal.

Amend RSA 169-C:6-a, IV as inserted by section 4 of the bill by replacing it with the following:

IV. If the court issues ex parte orders, the division or law enforcement officer shall file a petition meeting the requirements of RSA 169-C:7 within 72 hours of the issuance of the orders, excluding Sundays and holidays.

Amend RSA 169-C:7, IV(b) as inserted by section 6 of the bill by replacing it with the following:

(b) The name and address of any custodial parent.

Amend RSA 169-C:7, IV(f) as inserted by section 6 of the bill by replacing it with the following:

(f) The name of any household member who is subject to the order.

Amend section 7 of the bill by replacing it with the following:

7 Filing Petition; Issuing Ex Parte Order. RSA 169-C:8, I is repealed and reenacted to read as follows:

I. After a petition has been filed or an ex parte order issued, the court shall issue a summons to all persons named in the petition to be served by a law enforcement officer personally, or if personal service is not possible, at their usual place of abode. Such summons shall require the person or persons having custody or control of the child to appear personally and bring the child, unless otherwise ordered, before the court at a time and place set for a preliminary hearing, which shall not be less than 24 hours nor more than 7 days after return of service of the petition.

Amend the bill by replacing section 8 with the following:

8 Preliminary Hearing. RSA 169-C:15 is repealed and reenacted to read as follows:

169-C:15 Preliminary Hearing.

I. After an ex parte order is issued or petition filed, a preliminary hearing shall be conducted by the court to determine if reasonable cause exists to believe that the child is abused or neglected.

II. If the court does not find reasonable cause to believe that the child is abused or neglected, it shall dismiss the petition.

III. Upon a finding of reasonable cause that the child is abused or neglected, the court shall:

(a) Appoint an attorney to represent the child pursuant to RSA 169-C:10.

(b) Determine whether any ex parte orders issued should be continued or modified.

(c) Issue orders pursuant to RSA 169-C:16, which shall be immediate and in writing if the court finds that the child's circumstances or surroundings present an imminent danger to the child's health or life.

(d) Set a date for an adjudicatory hearing to be held within 30 days of the filing of the petition.

IV. The court shall determine whether each parent summoned having custody or control of the child understands the possible consequences to parental rights should the court find that the child is abused or neglected. Each person shall sign a statement stating that such person understands the consequences to parental rights. Such statement shall be in a form to be determined by the court.

V. Any person who is subject to an ex parte order may challenge the order at the preliminary hearing.

Amend RSA 169-C:16, V as inserted by section 13 of the bill by replacing it with the following:

V. If an order is made on a person not before the court under subparagraph I(d)(1), it shall be served on such person by a law enforcement officer. A hearing to challenge an order may be requested in writing. The hearing shall be held within 5 days of the request. A request for a hearing shall not stay the effect of the order.

Amend RSA 169-C:19, II(b) as inserted by section 15 of the bill by replacing it with the following:

(b) If an order is made affecting a person not before the court under subparagraph (a), it shall be served on such person by a law enforcement officer. A hearing to challenge an order may be requested in writing. The hearing shall be held within 5 days of the request. A request for a hearing shall not stay the effect of the order.

Amend RSA 169-C:19, IV as inserted by section 15 of the bill by replacing it with the following:

IV. The court may order any parent, guardian, relative, custodian, household member, or child to undergo individual or family therapy or medical treatment.

Amend the bill by replacing section 19 with the following:

19 Repeal. The following are repealed:

I. RSA 169-C:3, IV, relative to the bureau of children.

II. RSA 169-C:3, XXV, relative to protective supervision.

III. RSA 169-C:28-a, relative to household members.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to ask ought to pass as amended on SB 218. The bill is an attempt to address some of the problems that were created last year when an amendment was attached to a bill in the House. Though well intended, what the amendment would have done would have been to remove the perpetrator from the home and keep the child in the home. In fact, what it did

was leave the perpetrator in the home for a greater period of time and would have created a possibility where the child could have been taken from the home. And in fact, the perpetrator could have caused domestic violence. And in fact, I believe, that is what happened in some of the cases. So it was important that we bring in this bill to address this problem. The hearing was very well attended. In fact, it was held in the Representatives Hall. As the people progressed through the day there had been many who signed up in opposition to the bill and as the day progressed and they became more aware of what this bill was doing and the ability to give them more control and more understanding of the process. The people as they testified said that they would support this bill. They would like to see some changes, and we found many of those who spoke in opposition in fact agreed that this gave more power to the families. The bill received almost a unanimous vote from the Senate Judiciary committee and we believe that the amendments that were made will address some of the problems that Senator Wheeler had with the bill. This clarifies who receives notification of hearings and reviews and it also attempts to increase parental rights while protecting children from harm. The amendment merely cleans up some of the drafting errors in the original bill. I think that it is important to know that there are sections in the court rules that were being used and there were sections in the RSA's when a family would appear in court. And unfortunately, there was no clear place that a family could look to understand what was going to happen to them and what they needed to do. And so this bill attempts to clear up those problems. It still is very clear, and it is the current law, that no child can be removed from the home by anyone except a court. It also adds another layer. It says that it has to be under sworn oath before a child can be removed and that a child will not be removed from the home unless that everything else has been exhausted and that the court has no other alternative but to protect that child to remove it from the home. So I believe that this is extremely good legislation as amended and I hope that you will support it.

SENATOR WHEELER: This is the bill in which about 400 people showed up to testify too. They waited about two hours to testify and about 300 people remained. The testimony lasted until the end of the day. They came in to say that this was a bad bill. They know that it is a bad bill, and they still know that it is a bad bill, despite Senator Hollingworth's observations. This bill gives DCYS much more power than they had before. It does much more than correct a few little things to the House Committee of Conference last year. In actuality, by the way, this is not an agency bill. For the record, Lori Lutz told me personally, that she didn't have a particular interest in this bill passing. What this bill does and what Senator Hollingworth eludes to is, that they changed the definition of a household member so that a household member could be removed from the home if there was suspected child abuse or neglect, instead of the child, maybe a nice idea, but that is already in the law. What it does do is that household member, under current law, has a right to go to a judge with good cause shown and have that order of him removed from the house stay. Now he has to have good cause or he cannot go back into the home. The child is not in danger. It does not need to be fixed. That takes away the last due process right that person has, that household member has. That household member could be a stepmother for instance, she has lived in the home for five or six or eight or ten years and is accused of this and has no way to go to the judge and show good cause if they didn't do it, before they are removed from the home, and that is wrong. If they

don't have this right, they get thrown into a civil process where hearsay evidence is allowed and the burden of proof is only a preponderance. That is wrong. The people who came to this hearing understand that that is wrong. Also, when this household member is taken from the home, there is absolutely no reunification process for this household member. If the child is taken from the home, there is a reunification process to put the family back together. But if the household member, like I said, it could be a stepmother for instance, is taken out of the home and the state just goes like this, well you figure it out. That is wrong. But the worst part of this bill is on page six of the bill, on line seven in the original bill. It changes the words, "protective supervision" to "legal custody". Now this is where the division gets a whole lot of power, and the people who were there understand this. This happens before you are proven guilty of any child abuse or neglect that the legal custody of your child transfers to the state, and that is wrong. I would ask that you would find this bill inexpedient to legislate.

SENATOR HOLLINGWORTH: Where you're talking about . . . you are talking about page six - c?

SENATOR WHEELER: Page six in the original bill.

SENATOR HOLLINGWORTH: What had been protective supervision, is not changed to legal custody and that is what you are talking about?

SENATOR WHEELER: Yes. That would give the division the legal right to change your child's schools, to change doctors, to give the child medication, to take away medication and you haven't even been proved guilty of child abuse yet. That is wrong. I don't have a problem with protective supervision, but legal custody is a big problem.

SENATOR BALDIZAR: Senator Wheeler, we have sat through many hours of testimony on this and I have listened to all of it with an open mind and certainly trying to do what I think is right. While you oppose this amendment for the reasons that you do, not once have you mentioned protection for children in your arguments. Under what you would want us to do, where is the protection for children?

SENATOR WHEELER: There is plenty of protection for children in the existing law. If there is imminent danger or serious bodily injury, a child can be removed from the home before even getting a court order. That is still in the law as long as the conditions are serious and there's imminent danger of serious bodily injury. The amendment didn't even put in a stronger language as the people that were there and I had requested. The burden of proof on some of these things is still reasonable instead of probable cause. Those things didn't get fixed. Imminent danger was put in but the rest of the statute it reads, "imminent danger of serious bodily injury".

SENATOR MCLANE: Senator Wheeler, you and I have worked for many hours with both Lori Lutz who is the head of the Division of Children and Youth and I find seeing that this act was put in with the work of the Judiciary committee and at the request of the Division. I find that you're saying that Lori Lutz doesn't want this bill, very surprising, because my impression from talking to her is that she does want this bill.

SENATOR WHEELER: Well thank you for bringing that up, Senator McLane. I will only reiterate that I was told by Lori Lutz that this was not an agency bill and that she had no particular feelings about this bill. I appreciate it if that is on the record.

SENATOR SHAHEEN: I would ask the pages to distribute the fact sheets on this bill. I hear what Senator Wheeler said about the people who came

to testify on this bill. But I would point out to this body, that in fact, we heard a lot of testimony that day that really had nothing to do with this bill. It expressed concern about DCYS and particular problems that people had with DCYS. But I would say to this Senate, that this bill is not the place to address those particular concerns. The reason that we got this bill today was because of an amendment that was attached in the House to a Senate bill in the last session that had some language relative to taking the perpetrator in a child abuse case out of a home rather than taking the child out of the home. There was a problem with that language because it was not clear. And as Senator Wheeler points out, it did provide for an immediate stay in the case of the perpetrator. Now unfortunately, what we know about domestic violent situations is that whether we like it or not, very often when the abuser is put back in the home, there is continued abuse. There was concern among the community that deals with domestic violence that if the state were provided before a court hearing could take place, that there was real danger to children and mothers in that kind of a situation. So they came to the various communities involved with child protection and said, "look, we think that we need to rewrite this legislation". They have spent the summer and the fall working on rewriting that legislation. What they found out when they went to look at the Child Protection Act is as, you can see in the handout that you just received, sections and paragraph three, sections of the statute that is the Child Protection Act, have been repeatedly altered over the years by court decisions and legislative enactments. As a result, the statute is confusing and is often misinterpreted by both lay people and lawyers. The point of SB 218 is that it puts all of the elements into the statute in appropriate sections and making it clearer and easier for people to follow. Now relative to Senator Wheeler's concerns about doesn't this increase the authority of DCYS and doesn't it make it harder for families? In fact, I would argue that it does just the opposite: because it contains two sections which aren't in the current law which very clearly protect the rights of individuals. One is in the current law, you can now request removal of a child from the home just by a police officer or someone calling the court and making that request. Under SB 218 they would have to do it through an affidavit or a sworn oral testimony. They would have to sign an affidavit. So it would be under oath that protects the rights of the individual. The second thing that it does is to require that any non-custodial parent which is in many cases, the parent who has been taken out of the home, that they be notified of all court actions. That is not currently in the law. So again, it is a protection for those individuals and for families. I recognize that Senator Wheeler and the people who oppose this bill have a lot of concerns about DCYS. Some of them I agree with, but this bill is not the place to address these concerns. This bill is an opportunity for us to deal with the perpetrator in a way that gives them due process that does not punish the child in child abuse situations. I would urge the Senate to support the committee report of ought to pass.

SENATOR WHEELER: Could you please address in this bill the switching of "protective custody to legal custody" in all DCYS cases? That is a major, major thing that this bill does and it has nothing to do with the household member part.

SENATOR SHAHEEN: Well two things. One is that if you look at that section of the bill, and everybody, I think, got a copy of the side by side that had the current law and the proposed bill. I am sorry that I don't

have copies of all of those. So let me try and translate here. If you go on to read the statute, it says, "if the court finds sufficient facts to sustain the petition at a preliminary disposition, the court may repeal subparagraph c", which transfers legal custody to a child placement agency and amend it as follows. And if you look down under d, it gives the court a number of alternatives if they find that there is no danger to the child. The reason to transfer legal custody to the child placing agency is that currently it is not clear who has custody of that child, which may be good for families but it isn't necessarily good for that child. I guess my concern is that we do what is going to be best for the child. Which means that there should be no question about who has custody of that child until the court has a chance to review the petition and see what it thinks appropriate action is. And again I would point out that nothing can happen under this statute, relative to a child, unless the court takes action on it. So we are not going to have DCYS taking kids away, and we are not going to have police officers taking kids away. Only the court can make that decision.

SENATOR WHEELER: Please explain to me the urgency of why the child is not protected if the child is under protective supervision from the agency? They are away from the parents, why do the parents lose their legal custody to make other decisions in the child's life like medication, education? They are not even guilty of anything yet, Senator?

SENATOR HOLLINGWORTH: I would like to respond to that if I could, because it doesn't change anything that . . . it is not clear now what custody means and when you say . . . excuse me, what is the language that they use? Legal supervision. The reason why that was changed is that it wasn't clear. It hasn't been defined where the other has been clearly defined and it is in law so that people know clearly what they have to do and that is why that was changed, so that people would know exactly what they have to do and it is defined where the other is not.

SENATOR WHEELER: Senator Shaheen, on this handout from the New Hampshire Childrens Lobby, it says, and you mentioned, that if the perpetrator or the household member is taken out of the home it protects his due process rights: can you explain that, how this bill makes his due process right better, his or her?

SENATOR SHAHEEN: Because currently, there is no requirement that a non-custodial parent be notified of any of the court actions. The bill as it is written puts in those requirements.

SENATOR WHEELER: Would you believe that under the definition of household member, it doesn't say non-custodial parent? A household member could be the parent. The bill is written very, very vaguely?

SENATOR SHAHEEN: No, it clearly states it. I think, Senator, if you look in the definitions that household member is defined and it means, "any person living with the parent, guardian or custodian of the child from time to time or on a regular basis who is involved occasionally or regularly with the care of the child".

SENATOR WHEELER: Well I have had other legal interpretations of that. That should read with 'either parent'. Because sometimes, 'the parent' could mean 'the parent who is left with the custody' or 'the parent who isn't' removed. Plus the stepparent situation may not be the legal parent, but they could be there and raising the child and be as a parent to a child.

SENATOR SHAHEEN: Well, I guess I think that they would be covered under the household member definition then. I am not sure that I understand . . .

SENATOR WHEELER: I am just trying to point out that a parent or a stepparent can be removed without a stay. Even with a restraining order you get a chance to have a restraining order stay to make sure that the person making that judgment was correct. This bill takes away that part of the due process.

SENATOR SHAHEEN: No.

SENATOR LAMIRANDE: Senator Shaheen, I am sure that everybody has the best interest of the children at heart here as I realize that you have and Senator Hollingworth and Senator Wheeler has. I am just a little unclear about one section here. Is this bill, is it adding the fact that you are not taking, the court is not taking the child out of the house, but taking the alleged perpetrator out of the house, if in fact another parent has nothing to do with what has happened? Would the remaining parent still have custody of their child, that is what I am getting at?

SENATOR SHAHEEN: That is right.

SENATOR LAMIRANDE: That is what it is changing here? That is what it seems to be changing, I don't know. I am a little unclear, because at the bottom here it states . . .

SENATOR SHAHEEN: I am not sure that I understand your question.

SENATOR LAMIRANDE: According to "RSA 169:C-6, VI permitting the child or the alleged perpetrator to be removed." So in other words, one or the other, the child could remain in the home and the alleged perpetrator removed?

SENATOR SHAHEEN: Yes. That is the point of the bill.

SENATOR LAMIRANDE: That is not what it says here.

SENATOR SHAHEEN: But that . . . you are looking at the statute. That is current. The bill . . .

SENATOR LAMIRANDE: I am looking at what you have here that says that. But I am looking at this here and it says, "a police or a juvenile service officer may take a child into protective custody without the consent of the parents". "Parents". The way that it stands now. Now if a parent who is not guilty of any abuse or negligence, could they in fact keep their child and the alleged perpetrator be removed?

SENATOR SHAHEEN: Right. That is exactly the point of the statute.

SENATOR BALDIZAR: Senator Shaheen, I just wanted to . . . would you believe, restate what I think clarifies what the bill does. I think for years we have moved in and removed children from the home and it has been disrupted and has created far more problems to those children, when in fact, we should have taken out the alleged perpetrator of the crime and removed that person. I think that that is exactly what this bill does and it clarifies the language. And I think that it is in the best interest and it offers the most protection to children.

SENATOR SHAHEEN: Thank you, and I certainly agree, Senator Baldizar.

Recess.

Out of recess.

Question is on the committee amendment.

A roll call was requested by Senator Wheeler.

Seconded by Senator Blaisdell.

Paired votes: Senator Fraser, Senator Delahunty.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, Podles, J. King, Russman, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: Lovejoy, Currier, Roberge, Wheeler, Colantuono, Barnes.

Yeas: 15 - Nays: 6

Committee amendment is adopted.

SENATOR PODLES: Mr. President, I have a floor amendment. Mr. President and Senators, the amendment #1841 is an amendment to SB 218 establishes a committee to study child protection issues. The composition of the committee contains 19 members. I think that I have covered just about everybody to sit on this committee. It took me two days to do this. The duties of the committee are assigned and I want to tell you that this is a two-year study committee. I urge passage of this amendment. This is one way to defuse a dangerous situation. If we don't do anything this issue will continue to boil. Many citizens have shared their negative experiences with the system with us and it has been increasingly apparent that changes are needed. RSA 169-C is a patchwork of laws that were enacted in piecemeal fashion and it needs to be reviewed. I urge favorable support for this amendment. It is very important that we have this amendment.

Senator Podles offered a floor amendment.

1841B

Floor Amendment to SB 218-FN

Amend the bill by inserting after section 18 the following and renumbering the original sections 19 and 20 to read as 24 and 25, respectively:

19 Committee Established; Membership. There is established a committee to study child protection issues. The committee shall consist of the following members:

I. Two members of the senate, appointed by the president of the senate.

II. Two members of the house of representatives, one appointed by the speaker of the house and one appointed by the minority leader.

III. The director of the division for children and youth services, or a designee.

IV. One member who is an attorney and a member of the New Hampshire Bar Association, experienced in child protection cases, appointed by the governor and who shall act as chairperson of the committee.

V. One member representing the New Hampshire Alliance for Children and Youth.

VI. One member representing the Alliance for Family Rights.

VII. One member who is a district court judge, appointed by the chief justice of the supreme court.

VIII. One law enforcement officer, appointed by the president of the New Hampshire Police Chiefs Association.

IX. One member representing Parents for Justice.

X. One member representing CASA.

XI. One member of Victims of Child Abuse Laws (VOCAL).

XII. The director of New Hampshire Catholic Charities, or a designee.

XIII. The director of Child and Family Services, or a designee.

XIV. The director of the New Hampshire Alliance for Good Government, or a designee.

XV. The director of the Parents Rights Association, or a designee.

XVI. Two public members, appointed by the governor.

20 Duties of the Committee. The duties of the committee shall be to study all child protection issues including, but not limited to, a review of RSA 169-C, and to make recommendations to the legislature. This study shall include a review of the experiences of other states in dealing with child protection issues. Persons providing information to this committee shall be exempt from the provisions of RSA 169-C:25 relating to confidentiality. 21 Appointments; Mileage. Appointments of all members of the committee shall be made within 30 days after the effective date of this act. The members of this committee shall serve without compensation, except that members appointed from the legislature shall receive compensation for mileage at the usual legislative rate.

22 Officers; Meetings. The first meeting of this committee shall be called within 60 days after the effective date of this act by the chairperson. Meeting dates and places shall be set at the discretion of the chairperson.

23 Reports.

I. The committee shall submit an intermediate report of its findings and recommendations on or before September 1, 1994 to the speaker of the house, the president of the senate, and the governor.

II. The committee may make recommendations for legislation deemed appropriate by the committee.

III. The committee shall submit a final report of its findings and recommendations on or before September 1, 1995 to the speaker of the house, the president of the senate, and the governor. Upon issuance of its final report, this study committee shall terminate.

Amend the bill by replacing section 25 with the following:

25 Effective Date.

I. Sections 19-23 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill makes revisions to the child protection act by:

1. Replacing and redefining certain terms.
2. Providing a new section relative to emergency interim relief.
3. Revising those sections pertaining to:
   (a) Petition requirements.
   (b) Summons and notice requirements.
   (c) Preliminary hearing procedures.
   (d) Preliminary disposition procedures.
   (e) Adjudicatory hearing procedures.
4. Revising and reorganizing the section pertaining to dispositional hearings.
5. Replacing the term "social worker" with "child protective services worker," and replacing the term "bureau" with "division."
6. Replacing a section on household members which has been incorporated into other sections.

7. Establishing a 2-year study committee to study child protection issues.

Floor amendment is adopted.

Ordered to third reading.

SB 231-FN-A-LOCAL, an act relative to lead poisoning and control and continually appropriating a fund to the director of public health services. Public Institutions, Health & Human Services committee. Re-refer to committe. Senator Wheeler for the committee.

SENATOR WHEELER: The committee voted four to one to re-refer this bill. It was a very, very, complicated bill. We were very convinced that there is a problem with lead paint, but we weren't convinced of what the answer was. There were some amendments and there were some compromises that came forward, but didn't get to us in time to bring this to the floor and those types of things that we really needed to study for a long time. There could be severe financial ramifications to this depending upon how lead paint removal was handled, whether it would be abatement or encapsulation. There was some questions about whether we could develop a policy for landlords to be able to remove the lead paint themselves and become trained to do that. We just ask that you re-refer this bill and give us a chance to take a good thorough look, because that is what it is going to take to come up with a good policy. We would like to get that policy down in statute and not have it with broad rulemaking authority.

SENATOR SHAHEEN: I rise to ask the Senate to vote against the motion to re-refer. I intend, if we do that, to offer a substitute motion of ought to pass. I suppose in any case whether you support the bill or not, I would urge you to vote against the motion to re-refer and kill the bill. Let me just tell you why. I have got two fact sheets here that I am going to ask the pages to pass out about lead. Lead poisoning is a problem with enormous potential to become a huge threat to public health. Especially for young children. If you look under the first section of that, "Why is lead a health problem". It points out that young children are especially at risk of becoming lead poisoned because they ingest more lead dust which could damage them. Almost any home that was built before 1978 has lead paint in it. If that lead paint has not been maintained, if you are in a property where it hasn't been repainted and where the window and door frames have been allowed to deteriorate, there is a potential for lead to get down onto the floor to get into the dust. If you have an infant or a toddler crawling around you know they put their hands on the floor, they put their hands in their mouth, they can become lead poisoned. So young children, particularly young children under six, are at risk for lead poisoning. The reason that that is such a problem is that it affects a childs I.Q.. We had a physician come in and talk about this at the hearing. One of the things that he pointed out is that if you have an I.Q.. of 110 or 120, five points isn't going to make much difference in terms of how you function. If you have an I.Q.. that is 80 to 90 so that it is at the marginal level, so that you can hold a job and you can function, but you are not a rocket scientist, five points is going to make a difference between whether you can function and hold a job and pay your own way in society and whether or not society is going to have to pay for you. The reason that this bill is directed at rental property is because people living in rental property don't have the same authority as property owners to clean up their own property. I would just like to point out to everybody so that you are very clear: We currently have a lead law in the state. It is a lead law that gets activated if

a child is found on a property with lead poisoning. So, you only have to worry about abatement if you are a landlord if you have got a child who's been found with lead poisoning. So the argument that, 'I am going to have to go in and take out all of the lead paint in all of my apartments and repaint them', doesn't apply. Only if you have a child with lead poisoning. Now the reason that SB 231 is being submitted and the way that it differs from the current lead law is in three major ways. First of all, the current law applies only to towns and to those cities where it has been adopted. SB 231 would require that the current lead law apply everywhere, equally. Secondly, the current law does not provide for a landlord to encapsulate or manage in place any lead. So if I have a child found in my apartment with lead poisoning and the apartment is determined to be the place where they got it and the public health inspector goes in and inspects and you have paint on the walls like this, it is lead paint that has not deteriorated, not peeling or cracking, under SB 231 you can leave that there, you don't have to do anything about it. You can maintain it. You only have to do something about the places where it is peeling or cracking and it is not in good shape. SB 231 also provides that you can encapsulate that lead paint. So cover it with something. SB 231 would be a benefit to landlords. The third thing that is different is that the current law does not say anything about how abatement of that lead paint has to take place. One of the things that we have discovered is that children with lead poisoning, very often the landlord, the owner comes in with all good intentions to remove the lead paint, because they don't know how to do it, they remove it and make the child worse. What SB 231 would do is to require that people who do lead abatement be trained and be licensed in order to do that abatement. I heard from a constituent recently who said that they moved into an old house and found out that it had lead paint and hired somebody to come in and do the abatement. The person didn't do the job right and they put out $7,000 and didn't get anything done properly. So this bill would be a protection for homeowners because it would require that people who come in to do abatements know what they are doing. Now there have been a lot of questions about why do we need this bill now? The reason that we need it now is because federal legislation signed by the Bush administration was passed in 1992 and it will mandate when the rules are written, much of what is in SB 231 anyway. If we pass this bill now we will be eligible for federal funds which will be available in the form of grants to landlords to help them pay for abatements. Currently there isn't anything available. I have just one more comment. As I said, if you decided that you can't support SB 231 I would urge you instead of voting to re-refer, to kill it, because we have a current lead law in place which will provide some protection until we can get a new law. There is some real concern that that might be weakened if this bill gets re-referred.

SENATOR COLANTUONO: Senator Shaheen, the question is on your suggestion about either an up or down vote. I don't understand why you'd want to kill this bill. In my experience in my three years here has been very complicated questions like this, often come about as a result of study committees. Part 'a' of my, question is, was your bill a result of a study committee or an initial TAPE INAUDIBLE.

SENATOR SHAHEEN: It is the result of a task force that has been operating for about two years that has been headed by Public Health. They had a group of people working on it which has included the landlords, the realtors, some members of the Bankers Association and a variety of

human services workers that are dealing with this problem. There were also some legislators involved in that as well.

SENATOR COLANTUONO: With re-referral now, we have, especially if that group can be ongoing, the functional equivalent of a study committee to address all of these question. I know that I have received a lot of calls with concerns about the bill and I am sure that all of the other members do, so with that in mind and not really knowing whether I would be for or against any kind of a final version of this bill, but I certainly support re-referral to the study. I don't understand why you are suggesting to kill the bill, because then the vehicle is dead until the next session?

SENATOR SHAHEEN: Well, actually there are a couple of reasons. One is the concern that Public Health has that if . . . we do have a current lead law in place and that any effort to re-refer the bill would result in a weakened law over what is in place. The other concern is that there is federal legislation that is having the rules written which will be out within a couple of years and that that is going to supersede whatever the state does. So if we re-refer this bill, it is not going to go into effect until those federal rules get written anyway.

SENATOR WHEELER: Senator Shaheen, did not the committee receive testimony that as long as we are in the process of developing this policy, that we could still apply for it and possibly get federal funds?

SENATOR SHAHEEN: Senator Wheeler, there has been . . . the way the rules currently read, we have been told by HUD that in fact there would be an opportunity to apply; However, that was the case last year. There was legislation in process. Public Health applied for those funds and they were turned down. The very strong feeling is that we would have the same result if we don't have legislation in place. That even though, technically, yes, we could reapply for those funds, in fact, what we know from experience is that just good intentions are not looked at favorably by HUD.

SENATOR WHEELER: Being the fact that we could at least apply for the funds if we had something in the works, wouldn't it make more sense to re-refer this bill than to kill it?

SENATOR SHAHEEN: I think what makes sense is to pass this bill. I think it makes sense for a couple of reasons. Number one, it is going to provide for increased protection for children. As I have indicated, this is a very serious problem with serious potential consequences to a future generation if we don't deal with the problem. It also makes sense because it provides a better, easier, cheaper mechanism for landlords who may have a problem of lead paint to deal with the problem. They can use encapsulation, they can provide for in-place management and they have the potential to get funding if we pass this bill. None of those apply currently. Under the current law, if we re-refer this bill, if you are a landlord and have a lead poisoned child in your apartment, you have to remove every single piece of lead paint in order to deal with that problem. I think that SB 231 is a better way to deal with that.

SENATOR WHEELER: Senator Shaheen, where in the bill does it say that encapsulation is definitely an option? It is my recollection of the bill that it says that the director of Public Health could make encapsulation an option. Encapsulation is a very important part of what landlords need to keep the cost under control. If landlords can't keep the cost under control, we are not going to have affordable housing for the very people that we are trying to protect because the banks are going to own them like they do in Massachussetts.

SENATOR SHAHEEN: Well, this is a very different law than Massachusetts, so you can't make the same comparison. If you look on page three of the bill, it talks about in-place management. It also talks about encapsulation. What you will see if we get to the amendment that I have here, it further defines interim controls, in-place management and encapsulation in response to the questions that have been raised relative to defining it in the bill rather than waiting for the rules.

SENATOR WHEELER: Senator Shaheen, would you believe that I don't believe that it is responsible to take a bill that has ramifications of billions of dollars and address it in a floor amendment. We need time to study this?

SENATOR SHAHEEN: Senator Wheeler, although that was a would you believe, I think what is important to point out is that the problem, you are right, it does have ramifications of tremendous cost, but what I would point out is that this bill is a way to address those tremendous costs that is more satisfactory, both for kids and for landlords.

SENATOR J. KING: I rise in support of re-referring this bill. As was said, it came out of the committee 4 to 1 to go to re-referral. I also want to let you know that I am a sponsor of the bill. I have changed my mind, not because I am against lead poison bills doing their jobs, because I don't think that it does the job the way that it should be done. No way, shape or manner. Am I concerned about children? Yes. I have a bundle of grandchildren and a bundle of children, I am concerned about them, I certainly am, so don't get the feeling that the people that are opposing this, as it is today, are against any protection as far as lead poisoning is concerned. I do find it strange that you would rather see a bill killed than sent further to study, very, very strange. I wonder why. We have had this year, one full day, I think, when she finished typing them, there were 50 pages of testimony and there is still three more hours of testimony to be done. We had two days that we heard hearings. All that wealth of information is there now. All that we are asking is that can we sit down with these people and come out with a bill that this side and that side, the House has already agreed to work with us to make it a good bill. Am I planning to kill this bill between now and July of 1994? Heck, no. As I said before, I am one of the sponsors, why would I want to kill it? I am concerned, and they talk about Manchester being the only place. Heck no. It isn't just Manchester that is going to be affected. Any place that has a lot of high rise tenaments, Manchester being one of them. But I also want you to know that Manchester is one of the six localities in the state of New Hampshire that has this bill in effect as it is now, one of the sixth out of the whole state and they are doing their job. Ninety-three percent of the homes have lead paint in them. Seventy-one percent of these are in single family homes. This does not effect it. So you are talking about 20 percent of the homes or less. If you are concerned about lead paint poisoning, it should be universal, whether it is a single home or whether it is a tenament or whether it is a landlord, you should be universal. There is a way to do it. You have to sit down and try to work out a way whether it is through education or whether it is through some manner of getting those people involved so it won't happen. That is another thing I want to see done with the landlords, get them involved in the situation so that they will know how to do this job, so that they know how to prevent it, they will know what to look for when they go. These are the things that I am looking to get into the bill. We talked about encapsulation and everything else. There is no place in the bill that determines or spells out when

you use . . . which category that it is in, encapsulation or whether it is covering the whole thing or whether it is scraping or whatever it is. Somehow or another these people have to be aware of what is going on. Another thing is landlords seem to be like the villains in this thing. I know some good landlords, they are not all villains. They are concerned about people. They are concerned about tenants. Sometimes that can tear your place apart, but they are still in there. Let's give them a chance to sit down and put their input into this bill. That is all that we are asking for, for this referral. Federal funds, I have a letter here saying that you can apply as you did in the previous years. It doesn't guarantee that you are going to be given that grant, nor does it say if we pass this bill anywhere that you are going to be given this grant. Here is another one, "property owners with more than three, but less than six can get a license at half price to do their own." Tell me why they can't do it for the ones with just street dwelling units? Tell me why they can't do it if they own 20 units and they have a license and they can do it? I don't know. These are the things that we would like to talk about. It says in here any municipalities which adopts this thing, no problem. There is nothing that comes out specifically and says that every other place will have to follow the rules as they are. That means that the state is going to do it. I assume that is what that means, and I was told that's what it means. Does that mean that they are going to do it with the staff that they have now? How do you convince these towns and these other places that don't follow the law here that they should be part of it? How much money is it going to cost to run the program? They talk about fees, no figures, no figures at all when they talk about this. They talk about . . . nothing in the bill to address this if the paint has to be removed and the tenant moves out because they have to, the responsibility for that tenant having to move out. There is nothing in there dealing with that, nothing. The Division of Health does not want it to be re-referred. The Division of Health wants us to vote it up or down. I guess I could presume it that way. I think that it is a waste because of the time that has been spent on it and the concern that everyone of those people on that committee, the ones that voted for it and the ones that voted against it, are concerned about lead poisoning. To even give the impression that somehow or another this bill is going to die because it is going to be re-referred I find it kind of depressing to even think about it. I would suggest that the bill be re-referred. All that we are doing is asking that these people, this small group be allowed that special time, that little extra time to get their input in there and hopefully come up with a bill that everybody is happy about. It would be better for them, and it would be better for the state, and it would be better for the agency that is going run it, and it would be better for New Hampshire. Thank you.

SENATOR SHAHEEN: Senator King, like you, I don't think anybody wants to make landlords out as being the bad guys in this situation. As I pointed out, the reason that the bill is aimed at rental property is because people who live in rental properties don't have the same rights or responsibilities for their properties that homeowners do. But you are concerned about whether or not those people who were involved, I think is the question that I have got for you. You indicated that you didn't feel that they had been involved in the current law today, is that correct?

SENATOR J. KING: I didn't think that enough of them had been involved. The ones that still want to be involved, the ones that haven't still heard some of the amendments that have been provided. The ones

that have other input to put into it. I don't see the haste where that input that they might give us might be worthwhile, and I think that it would be worthwhile.

SENATOR SHAHEEN: I have here a sign up sheet from the October meeting of the task force that worked on lead paint that has a number of landlords, general contractors, people who were at that meeting. I also have here, 37 pages of comments with the response from Public Health that was submitted by landlords relative to their thoughts about what should be in the law. I guess that the question that I have got and probably the crux of why does it not make sense to continue to try and make changes in this bill is because, I think, that those people who have been working on it feel that they are at an impasse. That in terms of doing what needs to be done for lead paint, we have gone about as far as we can go and we are never going to be able to address the concerns of some of those landlords who are out there relative to making the law more lenient to satisfy their concerns.

SENATOR J. KING: Well first of all, I would say that we ask for an opportunity to try that and make sure that that does work. I want to also add that this bill takes effect July 1, 1994. That means that we could have our referral study done and be back in operation in January and get it out of here, and it would still be effective July 1, 1994. So that bugaboo about it not being there, they would still have the time to do it.

SENATOR SHAHEEN: Senator King, would you believe that it is going to take a long period of time to write the rules before this legislation can actually become effective? So if it is not passed until 1994 it is not going to be able to become effective until 1996?

SENATOR J. KING: I am also glad that you brought that up. That reminds me of the rules and that is another concern that everybody has that is involved, that is the way that the rules are written and what they cover and what they do. Ask some of the people that serve on the rules committee. They would like to spell . . . and that is what these people would like to do, spell some of the things out in there, not in the rules, put it right in the law so that they know where they stand.

SENATOR MCLANE: Senator Shaheen, as I have been listening to this debate most of the discussion is about the landlords. I had a very distressing thing happen to me yesterday. A public servant that I had been working with for the last 25 years in the legislature came to me with tears in his eyes and he said that his only grandchild who was one year old had just been discovered to have lead poisoning. I didn't know how to react because I . . . I guess my question to you is, what is the physical manifestation of lead poisoning? What is it? You spoke again and again about a child with lead poisoning and I want to know what is it?

SENATOR SHAHEEN: Well, it can have physical effects which very often lead to lower I.Q., I mean that is the very common effect. Ultimately, if it is not taken care of, death. Severe lead poisoning results in death.

SENATOR HOLLINGWORTH: I am one of those landlords that everybody talks about, I have rental property. I think that this bill, SB 231 will benefit me. Right now if I had a problem with lead paint, I would have to remove all of that paint. Now I can encapsulate it and only take care of the areas that are cracked. I think that is an important thing for landowners to know that this is not a burden to them. In fact, it is a benefit to them. I think that there has been some fear out there, and I do understand that. But I do think that, clearly, to have people who are

licensed to know their job and their task is, is a benefit to me. I, right now, could hire someone and he may not have the least idea of what he is doing which could result in a bad situation. I heard a horror story about a family that was in a house, the painters arrived and started scraping on both the back and front of the house, actually imprisoning the children within that apartment while the men that were scraping were wearing masks and had protective clothes while those children were trapped, literally, inside that apartment. That would not be allowed to happen. People would be licensed and be certified and know what they were doing. New Hampshire right now received a grant for $1.6 million to run the lead program. The reason that John brought up the fact that you don't have dollars in there is because the lead program can be run with that $1.6 million for the next five years. What would happen if we don't enact a lead contentt licensed program? We lose the ability to get other federal dollars. Every single year that group of states that are going after those federal grant dollars, doubles. So if we don't enact this now, we lose the opportunity. It is like the window of opportunity that we have open. I understand everyone's concerns, but I had my own concerns. I have to say as a landowner, but I have to say that I feel very confident that this is not going to be a burden to landowners. It is going to be a benefit and that it will help New Hampshire take care of our children. Nothing will cost the state more than a severely mentally disabled child that we have to pay the education cost of. I think that nothing is more heartbreaking to a parent than to know that their child, by merely crawling on the floor in a rented apartment, they could end up severely mentally damaged. I would hope that we would pass this legislation.

SENATOR PODLES: As a member of the committee, I rise in favor of rereferral. I do this for several reasons. First of all, we listened to testimony for about five hours and it was very lengthy. We received amendments from the New Hampshire Bankers Association. We have amendments also from the New Hampshire Association of Realtors and we really did not have any time to even look at these amendments. I agree that we need a lead paint bill. It is necessary, but this is a bad bill. What it is going to do is it is going to bankrupt the property owners. What they are going to do is to give the keys to the city or give the keys to the town because they are not going to be able to afford $7,000 per unit with this bill. This is what the estimate cost was. The de-leading method is a very expensive method and it surely would bankrupt these property owners. I have an article that I have cut out from the Boston Globe from just a few weeks ago and they have a very expensive method and they are now looking at other methods. It says, "that lead paint battle may get less costly", because they are definitely looking at other methods. We have not even looked at anything else, so it would be just certainly wrong to be passing a bill that the committee never had time, never had the opportunity to check. I urge you not to pass this bill.

SENATOR HOLLINGWORTH: Senator Podles, I just want to be clear, that there is no cost going back to the local communities, that is correct?

SENATOR PODLES: This is a cost to the property owners.

SENATOR HOLLINGWORTH: And right now, a property owner if they would have to remove all of the paint, they could not just encapsulate it or they couldn't just remove that paint that was cracked, isn't that true?

SENATOR PODLES: They are looking at encapsulation. In fact I got a telephone call from several of the people who would like to come in and

demonstrate to us, they have the paint, they have the boards and they are ready to come in and demonstrate. I was going to talk to the Chairman, except that we didn't have the time.

Question is on the committee report of re-refer.

A roll call was requested by Senator Shaheen.

Seconded by Senator Blaisdell.

Paired votes: Senator Fraser, Senator Roberge.

The following Senators voted Yes: MacDonald, Lovejoy, Currier, Disnard, Wheeler, Colantuono, Podles, Barnes, J. King.

The following Senators voted No: Lamirande, W. King, Blaisdell, Baldizar, Pignatelli, McLane, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas: 9 - Nays: 12

Motion of re-refer fails.

Senator Shaheen moved ought to pass.

Motion of ought to pass is adopted.

SENATOR SHAHEEN: If you look at your summary of amendments, I think that that is the best explanation. Rather than spending a lot of time going down through these, let me just tell you how the summary is listed. The action on the left deals with what the amendment is. The effect tells you what it would do. It gives you the page number of the amendment and tells you what group requested this amendment to address questions that they had about the bill. If I would just leave it at that and if anyone has any questions about what any of these do, I would be happy to answer any of them.

Senator Shaheen offered a floor amendment.

1882B

Floor Amendment to SB 231-FN-A-LOCAL

Amend the bill by replacing all after section 1 with the following:

2 Lead Poisoning. RSA 130-A is repealed and reenacted to read as follows:

CHAPTER 130-A

LEAD POISONING PREVENTION AND CONTROL

130-A:1 Definitions. As used in this chapter:

I. "Child" or "children" means a person or persons 72 months of age or less.

II. "Child care facility" means a facility required to be licensed under the provisions of RSA 170-E:4.

III. "Director" means the director of the division of public health services, department of health and human services.

IV. "Division" means the division of public health services, department of health and human services.

V. "Dwelling" means a structure used or intended for human habitation, including interior and exterior surfaces, and may include common areas and all other property, including land and other structures, located within the same lot.

VI. "Dwelling unit" means any room, group of rooms or other interior area of a dwelling or other structure, all or part of which is offered or made available for human habitation, and may include all common areas of the unit and exterior surfaces.

VII. "Encapsulation" means resurfacing or covering surfaces, and sealing or caulking with durable materials, to prevent or control the creation of lead exposure hazards, unless otherwise defined by the United States Environmental Protection Agency in which case the federal definition shall apply.

VIII. "Health authority" means any health officer appointed under RSA 47:12 and RSA 128:1.

IX. "Interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead exposure hazards, including regular cleaning, repairs, maintenance, painting, or temporary containment, and the establishment and operation of management and resident education programs. "Interim controls" may include in-place management.

X. "Lead abatement worker" means an employee of a lead abatement contractor or of the owner or manager of a leased or rented dwelling or dwelling unit, or of a child care facility, engaged in lead base substance abatement or who supervises such abatement.

XI. "Lead base substance" means:

(a) When present in a dried film of paint or other coating on walls, woodwork or other surfaces, or in plaster, putty or other substances:

(1) The presence of lead equal to or greater than 1.0 milligrams of lead per square centimeter of surface area as measured on site by a portable x-ray fluorescence analyzer; or

(2) The presence of lead equal to or greater than 0.5 percent lead by weight as determined by laboratory analysis.

(b) When present in soil, the presence of lead equal to or greater than 1,000 parts per million of lead, unless otherwise established by the United States Environmental Protection Agency, in which case the United States Environmental Protection Agency standard shall prevail.

(c) When present in surface dust and quantified as an area or mass concentration:

(1) The presence of lead on floors, equal to or greater than 200 micrograms of lead per square foot;

(2) The presence of lead on windowsills, equal to or greater than 500 micrograms of lead per square foot;

(3) The presence of lead in window wells, equal to or greater than 800 micrograms of lead per square foot; or

(4) As established by the United States Environmental Protection Agency, in which case the federal standard shall prevail.

XII. "In-place management" means the use of maintenance or administrative controls, including specialized cleaning and periodic monitoring, to prevent lead base substances from becoming lead exposure hazards.

XIII. "Lead base substance abatement" means any set of measures designed to permanently eliminate a lead exposure hazard, including removal, containment, encapsulation, or replacement of surfaces or fixtures that present a lead exposure hazard and all preparation, cleanup, and post abatement clearance testing associated with such measures.

XIV. "Lead abatement contractor" means any person or entity engaged in lead base substance abatement.

XV. "Lead inspector" means any person or entity engaged in inspections for the presence of lead base substances. The term includes individuals who design or evaluate lead base substance abatement projects.

XVI. "Lead exposure hazard" means:

(a) The presence of lead base substances on chewable, accessible, horizontal surfaces that protrude more than 1/2 inch and are located more than 6 inches but less than 4 feet from the floor or ground;

(b) Lead base substances which are peeling, chipping, chalking, or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated and is likely to become accessible to a child;

(c) Lead base substances on interior or exterior surfaces that are subject to abrasion or friction or subject to damage by repeated impact; or

(d) Bare soil within 100 feet of a dwelling or dwelling unit that contains lead in concentrations at or greater than the limits defined in RSA 130-A:1, IX (b).

XVII. "Occupant" means any person who legally resides in a dwelling or dwelling unit.

XVIII. "Owner" means any person who, alone or jointly or severally with others, has legal title to any dwelling, dwelling unit, or child care facility, or a person who has charge, care or control of a dwelling, dwelling unit, or child care facility as an agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. An agent of the owner excludes real estate, property management, and other entities which do not have authority to fund capital or major property rehabilitation on behalf of the owner. No mortgagee shall be considered an owner, except when such mortgagee actually takes possession or responsibility for the day-to-day operation of the dwelling, dwelling unit or child care facility, or contracts with a third party to take charge of day-to-day operations of the dwelling, dwelling unit or child care facility. For the purpose of this definition, the owner of publicly owned dwellings, dwelling units or child care facilities shall be the chief administrative officer of the responsible town, city, county or state agency.

XIX. "Person" means any individual, corporation, company, association, partnership or other entity and includes town, city, county and state governmental agencies.

130-A:2 Duties of the Director.

I. The director shall:

(a) License in accordance with RSA 130-A:12, I, or deny or revoke the licensure of, any lead inspector or lead abatement contractor advertising, offering or otherwise making available services in the state of New Hampshire, whether or not the inspector or contractor is incorporated in the state.

(b) Certify employees of owners or managers of dwellings, dwelling units, or child care facilities, and of lead abatement contractors, who are engaged in lead base substance abatement, or refuse to provide or revoke such certification. A separate certificate shall be issued to workers who supervise or design lead base substance abatement projects.

(c) Collect fees for the issuance of licenses and certificates under RSA 130-A:2, I (a), (b) and (k).

(d) Adopt rules required under this chapter.

(e) Implement public education programs for the general public, for owners, managers and occupants of dwelling and dwelling units, for owners and operators of child care facilities, and for physicians and other health care workers providing services to children concerning the prevention and treatment of lead poisoning and relative to the provisions of this chapter and the reporting of lead poisoning under RSA 141-A.

(f) Implement comprehensive case management for cases of lead poisoning when a child's blood lead level meets or exceeds 15 micrograms per deciliter. Case management shall include the coordination of medical services appropriate for the treatment of the reported lead poisoning.

(g) Provide training for and maintain an active program of coordination with health authorities relative to the control of lead base substances with specific regard to the conduct of inspections, lead base substance abatement, in-place management, and enforcement activities carried out under this chapter.

(h) Certify training programs for lead abatement contractors, lead inspectors, and lead abatement workers.

(i) Develop and implement, in accordance with RSA 130-A:7, an investigation and enforcement program for lead base substances and the abatement of lead exposure hazards.

(j) Develop and maintain a data base on the incidence of lead poisoning in children. This data base shall be established using data supplied under RSA 130-A:3.

(k) Certify laboratories performing tests to detect or measure lead in human body fluids and tissues.

II. The director may establish, in accordance with rules adopted under RSA 541-A, a notification program relative to lead base substance inspection and abatement activities.

130-A:3 Laboratory Reporting. Any laboratory performing blood lead analysis on adults or children residing in New Hampshire shall report, in accordance with rules adopted under RSA 130-A:10, test results of such analysis.

130-A:4 Prohibited Use of Lead Paint. It shall be unlawful for any person to use or apply, or cause to be used or applied, in any child care facility, dwelling or dwelling unit any paint containing more than 0.06 percent lead.

130-A:5 Investigations.

I. The director may investigate cases of lead poisoning in children reported under RSA 141-A whose blood lead level meets or exceeds the threshold established under RSA 130-A:10, V. The director may also conduct investigations when there is reason to believe that a lead exposure hazard for a child exists. Such investigations shall include, but not be limited to:

(a) Requiring additional information and periodic reports from the child's health care provider, the owner or owner's agent of a leased or rented dwelling or dwelling unit occupied by a child, the owner or operator of any child care facility attended by the child, and any lead inspector or lead abatement contractor involved in lead base substance abatement at the child's dwelling, dwelling unit, or child care facility.

(b) Inspections of dwellings or dwelling units or of any child care facility, and testing environmental samples.

(c) Issuing orders requiring the abatement of lead exposure hazards from a leased or rented dwelling or dwelling unit and from a child care facility, or issuing a notice to the owner of a dwelling or dwelling unit.

II. The director may request health authorities to assist in such investigations.

130-A:6 Inspections.

I. The director shall, as part of an investigation conducted under RSA 130-A:5 and after making reasonable efforts to notify the owner or the owner's agent, conduct an inspection of any leased or rented dwelling or dwelling unit during business hours, or at a time mutually agreed to, for the purposes of identifying the presence of lead base substances. The findings of the inspection shall be provided to the occupant, the health authority, the child's health care provider and to the owner or the owner's

agent. When a lead exposure hazard is determined to exist, the director shall issue an order requiring lead base substance abatement to the owner and, if appropriate, to the owner's agent. A copy of the order shall be provided to the occupants of the dwellings or dwelling unit, to the occupants of any adjacent or attached dwellings or dwelling units having the same owner and where a child resides, and to the health authority. An order shall be issued in accordance with RSA 130-A:7.

II. The director may, as part of an investigation conducted under RSA 130-A:5, if the lead poisoned child spends 10 hours or more a week at the facility, and after making reasonable efforts at notification of the owner of a child care facility and the license holder if other than the owner, conduct an inspection of a child care facility constructed prior to 1978 during business hours, or at a time mutually agreed to, for the purposes of identifying the presence of lead base substances. The findings of the inspection shall be provided to the owner, to the license holder if other than the owner, the child's health care provider, and the health authority. When a lead exposure hazard is determined to exist, the director shall issue an order requiring lead base substance abatement to the owner and to the license holder, if other than the owner. A copy of the order shall be provided to the health authority and to the parents or guardians of children who use the child care facility. An order shall be issued in accordance with RSA 130-A:7.

III. The director may, as part of an investigation conducted under RSA 130-A:5 and when the child reported under RSA 141-A resides in a dwelling or dwelling unit owned by the child's parents or guardians, conduct an inspection with the consent of the owner at a time convenient to the owner and provide to the owner the result of the inspection. When a lead exposure hazard is determined to exist, the director shall provide a notice to the owner and shall also provide information on the health consequences of lead poisoning and procedures for lead hazard reduction.

IV. The director may, as part of an investigation carried out under RSA 130-A:5, conduct an inspection of structures other than the dwelling or dwelling unit of the child and child care facilities used by the child. The inspection shall be conducted with the consent of the owner, manager, or other person in charge of the facility or structure at a time convenient to the owner, manager or other person in charge. Such inspections shall be made only when there are reasonable grounds to suspect that a lead exposure hazard may exist. The director shall provide to the owner, manager or other person in charge the result of the inspection. When a lead exposure hazard is determined to exist, the director shall provide to the owner, manager or other person in charge, the child's health care provider and the health authority a notice and shall also provide information on the health consequences of lead poisoning and procedures for lead hazard reduction.

V. The director, or designee, may conduct inspections during lead base substance abatement to assure that the abatement is conducted in accordance with rules adopted under this chapter.

VI. Inspections shall be carried out in accordance with rules adopted under RSA 130-A:10.

130-A:7 Enforcement.

I. Whenever the director has reason to believe that the provisions of RSA 130-A:8 or RSA 130-A:9, or any rule adopted by the director under this chapter has been violated, the director shall issue a notice of violation. The director shall also impose administrative fines under RSA 130-A:14 and may also request injunctive relief under RSA 130-A:17.

II. The director, in requiring lead base substance abatement under RSA 130-A:8 or RSA 130-A:6, I or II, shall do so by written order. The order shall include, as appropriate, the following information:

(a) The findings of the inspection, including the specific locations determined to constitute a lead exposure hazard.

(b) The methods appropriate for lead base substance abatement and copies of rules pertaining to lead substance abatement adopted under the provisions of this chapter.

(c) The period of time within which lead base substance abatement shall be completed. The time period for abatement of an occupied dwelling or dwelling unit shall not exceed 30 days except that the period may, upon request of the person to whom the order is issued, be extended by the director for a time period not to exceed 60 days when sufficient reason is presented for not being able to meet the conditions of the order within the 30-day period.

(d) The standards for reoccupancy of a dwelling or dwelling unit by a child, or the resumption of operations of a child care facility, after the conduct of lead base substance abatement.

(e) Responsibility for verification by a lead inspector of lead base substance abatement to the director.

III. Any person subject to an order issued under this section may petition the superior court to review such order. The director shall also impose administrative fines under RSA 130-A:14 and may also request injunctive relief under RSA 130-A:17 in the event that the order is not followed.

130-A:8 Occupants 6 Years of Age or Less. No person shall knowingly rent a dwelling or dwelling unit which has a lead exposure hazard present, when such dwelling or dwelling unit is to be occupied by a child. In circumstances where the presence of a lead exposure hazard is unsuspected and becomes known when the dwelling or dwelling unit is already rented to a family with a child, the family of the child shall not be evicted for that reason, and the owner and occupant of the dwelling or dwelling unit shall be given a written order by the director, issued in accordance with RSA 130-A:7.

130-A:9 Prohibitions.

I. No person shall perform or cause to be performed lead base substance abatement, in-place management, or interim controls in a dwelling or dwelling unit, or in any child care facility, in any manner other than as provided for in rules adopted under RSA 130-A:10.

II. No person shall perform or cause to be performed a lead inspection in a dwelling or dwelling unit or in a child care facility in any manner other than as provided for in rules adopted under RSA 130-A:10.

III. No child or pregnant woman shall be present in a leased or rented dwelling or dwelling unit, or in a child care facility, during the period of abatement when the method of abatement causes the release of lead base substances which may be inhaled or ingested. The dwelling or dwelling unit or the child care facility shall not be reoccupied until an inspection is performed which indicates the lead exposure hazard has been eliminated. The director shall include this prohibition in any order issued under RSA 130-A:7.

IV. No person performing inspections for the presence of lead base substances as a lead inspector after lead base substance abatement shall perform or have performed the abatement.

V. No person shall advertise or otherwise offer or make available services as a lead inspector or lead abatement contractor without being licensed under RSA 130-A:12.

VI. No person shall engage any individual for lead base substance abatement who has not been tested and certified under RSA 130-A:12.

VII. No training program shall be offered in this state for the purposes of training lead inspectors, lead abatement contractors, or lead abatement workers that has not been certified under RSA 130-A:12.

130-A:10 Rulemaking. The director shall adopt rules, pursuant to RSA 541-A, relative to:

I. Qualifications and procedures for licensure of lead inspectors and lead abatement contractors, in accordance with RSA 130-A:12. The rules shall provide for reciprocity with other states having similar standards.

II. Standards and procedures for the testing and certification of lead abatement workers, in accordance with RSA 130-A:12. The rules shall provide for reciprocity with other states having similar standards.

III. The conduct of inspections and inspection standards for lead inspectors, including procedures for issuing certificates of inspection, certifications of compliance, and certifications when a dwelling or dwelling unit is found to be lead free.

IV. Fees to be collected for the issuance of licenses to lead inspectors, lead abatement contractors, for certification of lead abatement workers, for testing resulting from investigations, for certification of laboratories, and for notifications under RSA 130-A. Property owners who own more than 3 but fewer than 6 dwellings or dwelling units shall pay a fee for licensure which is 1/2 of that paid by other lead abatement contractor licensees. Such reduced fee license shall only be valid for work on dwellings or dwelling units owned by such license holder.

V. Procedures for the conduct of investigations carried out under RSA 130-A:5, including the conduct of inspections and establishment of a blood lead level requiring an inspection.

VI. Procedures for issuing orders under RSA 130-A:7, including procedures for extending the time available for lead base substance abatement.

VII. Procedures for notification activities carried out under RSA 130-A:14.

VIII. Procedures for lead base substance abatement, in-place management, and interim controls for interior and exterior surfaces. The procedures shall include methods of abatement and the measures necessary to protect the health and safety of lead abatement workers and to control the release of lead base substances to the environment.

IX. A schedule of administrative fines which may be imposed under RSA 130-A:14 for a violation of this chapter or the rules adopted pursuant to it.

X. Procedures for notice and hearing prior to the imposition of an administrative fine imposed under RSA 130-A:14.

XI. Standards for training programs for lead inspectors, lead abatement contractors or lead abatement workers.

XII. Procedures for reporting of laboratory test results under RSA 130-A:3.

XIII. Standards and procedures for certifying laboratories performing tests to detect or measure lead in human body fluids or tissues.

130-A:11 Application.

I. The division shall implement and enforce the provisions of this chapter throughout the state.

II. Notwithstanding the provisions of paragraph I, any municipality which adopts this chapter by a majority vote of its local governing body, as defined in RSA 672:6, may assume full and sole legal authority to

enforce the provisions of this chapter by any means lawfully delegated to the municipality by any statute, except for matters pertaining to licensure and certification under RSA 130-A:12 which shall rest solely with the division.

III. Health authorities in municipalities other than those adopting this chapter under RSA 130-A:11, II, may, upon request to and approval by the director, carry out investigations under RSA 130-A:5. The issuance of orders shall remain the sole responsibility of the director.

130-A:12 Licensure, Certification.

I.(a) A license to perform as a lead abatement contractor or lead inspector shall be issued in writing by the division in accordance with rules adopted under RSA 130-A:10, I. The license shall be valid for 12 months from the date of issuance, shall contain the expiration date, and shall be signed by the director or designee. The license or a certified copy of the license shall be available for inspection at any worksite during the period of work of the lead abatement contractor or lead inspector.

(b) Any owner who owns 3 or fewer dwellings or dwelling units shall not be required to obtain a lead abatement contractor license to perform lead abatement on such owner's dwellings or dwelling units, provided that such owner shall comply with all rules adopted under RSA 130-A:10, I.

II. Lead abatement workers shall first obtain a certification from the division. The certification shall be issued in accordance with rules adopted under RSA 130-A:10, II. The certificate shall be in writing, shall be valid for a period of 12 months from the date of issuance, and shall be signed by the director or designee. The certificate or a certified copy of the certificate shall be available for inspection at any worksite where the individual is performing lead base substance abatement.

III. Training programs offered in New Hampshire for lead abatement contractors, lead inspectors, and individuals seeking certification as lead abatement workers shall first be certified by the division in accordance with rules adopted under RSA 130-A:10, XI. Such certification shall be in writing, shall be valid for a period of 12 months from the date of issuance, and shall be signed by the director or designee. The certification or a certified copy of the certificate shall be available for inspection during any period of training.

IV. Laboratories performing tests to detect or measure lead in human body fluids or tissues shall be certified by the division in accordance with rules adopted under RSA 130-A:10, XIII. Such certification shall be valid for a period of 12 months and shall be signed by the director or designee.

130-A:13 Notification Program. The director may, if necessary, institute a program requiring the notification to the division of all inspections for lead base substances carried out by lead inspectors and of all lead base substance abatement activities conducted on child care facilities and on leased or rented dwelling and dwelling units, carried out by lead abatement contractors or by lead abatement workers. The program shall be conducted in accordance with rules adopted under RSA 130-A:10, VII, and the director shall collect fees for notifications. The director may conduct inspections of such activities as necessary to assure that the provisions of this chapter and rules adopted under it are carried out.

130-A:14 Administrative Fines. The director, after notice and hearing and pursuant to rules adopted under RSA 541-A, may impose an administrative fine not to exceed $2,000 for each offense upon any person who violates any provision of this chapter or rules adopted under this chapter. Rehearings and appeals from a decision of the director shall be in accor-

dance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The director shall adopt rules, under RSA 541-A, relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the general fund.

130-A:15 Lead Poisoning Prevention Fund. There is hereby established the lead poisoning prevention fund to be used to carry out the provisions of this chapter. The fund shall be composed of fees collected in accordance with this chapter. The fund shall be nonlapsing and shall be continually appropriated to the director, division of public health services, for the purposes of this chapter.

130-A:16 Penalty. Any person who violates any provision of this chapter shall be guilty of a misdemeanor for each day that a violation exists. When lead base substance abatement has been ordered, the period of violation shall be calculated from the last date for correction stated in the order issued under RSA 130-A:7 or in any extension of the order.

130-A:17 Injunctive Relief. The director may request the attorney general to bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction or both, to enforce any provision of this chapter, rules adopted under this chapter, or order issued pursuant to this chapter.

3 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (zz) the following new subparagraph:

(aaa) The fees collected under RSA 130-A, which shall be credited to the lead poisoning prevention fund established in RSA 130-A:15.

4 Application. The rules previously adopted under RSA 130-A shall remain in effect, unless conflicting with this chapter, until new rules are adopted under the provisions of this chapter.

5 Effective Date. This act shall take effect July 1, 1994.

SENATOR CURRIER: Senator, this floor amendment basically guts the whole bill and this is a whole new proposal?

SENATOR SHAHEEN: No.

SENATOR CURRIER: Well, it says, "everything after the enabling cause"?

SENATOR SHAHEEN: Well, but . . . most of it is repeated, it is just the way that Legislative Services wrote the amendment. If you would look . . . I can go through these one by one if you'd like me to?

SENATOR CURRIER: No. I don't plan to vote for it anyway, so don't bother.

SENATOR LOVEJOY: Is it your position, Senator, that there has been a public hearing on this?

SENATOR SHAHEEN: Well, not directly . . .

SENATOR LOVEJOY: There hasn't been a public hearing?

SENATOR SHAHEEN: There has been a hearing on these issues, right. In fact, most of these have been addressed by the various groups. If you will note, for example, interim controls, those issues were addressed at the public hearing by property owners and realtors, for example.

SENATOR LOVEJOY: I think that just to make a statement that we all favor in controlling lead poisoning and we all recognize the dangers and I don't think that that is the argument. I think what my question to you is, is it the Senate's position that we pass amendments that haven't had the opportunity of a public hearing?

SENATOR SHAHEEN: Again, I would reiterate, Senator Lovejoy, that all of the issues that are addressed in these amendments have been discussed at the public hearing.

SENATOR LOVEJOY: I guess the question that I have probably comes from my inexperience, Mr. President. My inexperience, I would address to you. Is it customary that we present a bill for action without a public hearing?

SENATOR HOUGH (In the Chair): Offered on the floor, on a bill which is reported by committee, is in order. The amendment has been offered and the question has been accepted. The disposition of the motion is in the position of the body.

SENATOR LOVEJOY: Even if the amendment changes the bill itself in its entirety?

SENATOR HOUGH (In the Chair): It is the purpose of the debate of the body to make a judgement on the determination. The floor amendment has been properly drafted by Legislative Services and there has been a requisite number of copies that are in our possession and the amendment has been accepted. The disposition is in the control of the body.

SENATOR COLANTUONO: Senator King, being the Chairman of the committee, the fact that we have been handed a floor amendment which is essentially a whole new bill of some 18 pages, do you believe that it would be prudent and also considering that I certainly haven't seen any words in this and I am sure that many of the other Senators haven't, would you believe that it would be irresponsible for the Senate to take a vote on final passage and third reading of this bill at this time? And do you feel that it would be prudent to have the matter recommitted to your committee to take a look at it and make a recommendation to us as to whether we should pass this bill?

SENATOR J. KING: I agree with you and I think that it should be recommitted. I might also add, a lot of you haven't seen some of these in probably any public hearing. You hear a heck of a lot of discussion, but I don't think that everybody in the committee has seen these packages of amendments. This is a good reason why I wanted the bill re-referred, right here. Eighteen pages of this floor amendment. There is no discussion. There is no nothing as far as these are concerned at the committee, with this amendment here. The point is, maybe they are good ones, but maybe they are not good ones, maybe they are something else. But, the point is, when you have to add 18 pages to it, there is something missing in the whole operation.

SENATOR BALDIZAR: Senator Shaheen, looking at the summary to the amendments, would you agree, and I did listen to those hours of testimony, I was involved and I sat there and I heard both sides. Would you agree that the present law is more stringent then what we are doing and that this amendment, in fact, offers solutions to some of the questions that were raised by Senator Wheeler? For instance, it allows for on-site encapsulation, there were a couple others that I saw. The in-place man-

agement, it allows for encapsulation. It defines what encapsulation is, it makes it much more clear than what is present law. It removes daycare facilities from the current law. It is actually better than the current law for people in our state. There was one other, oh, it defines, without a license who can remove the very first item in the summary. So after I have listened and I want to do the right thing on this bill, I think the amendments actually make it much clearer and provide an easier way, a quicker way, and a less costly way to do the abatement process. Would you agree?

SENATOR SHAHEEN: I would certainly agree, Senator Baldizar. I would again point out that these amendments, like any other, repeat the whole section, changing only the piece in that section that needs to be changed. So you don't have 18 pages of changes here. You have about one page of changes, but the sections that they cover involve 18 pages.

SENATOR PODLES: Senator Shaheen, I noticed that the amendment has a fiscal note and it goes to Appropriation. Could you give us an idea of what the fiscal note is going to be on this bill?

SENATOR SHAHEEN: I don't have a fiscal note on my amendment. I have a fiscal note on the original bill. Is that what you are looking at?

SENATOR PODLES: Do you know what the fiscal note would be?

SENATOR SHAHEEN: There is going to be some cost for administering the program that will be paid for out of the fund that is described in the bill. That cannot be determined yet because the rules have not been written.

SENATOR PODLES: I am not sure that I understand the fund that you are speaking about. Could you tell me about the fund?

SENATOR SHAHEEN: If you will look in the original bill, page 17, lead poisoning prevention fund. "There is hereby established the lead poisoning prevention fund to be used to carry out the provisions of this chapter. The fund shall be composed of fees collected in accordance with this chapter".

SENATOR PODLES: The bill runs to page 15.

SENATOR SHAHEEN: No, I am sorry, you are looking at the amendments, I am in the bill. The original bill. That section of the bill has no amendments.

SENATOR PODLES: This is all of the cost? Two pages of it?

SENATOR SHAHEEN: It is not the cost, you asked me what the lead poisoning prevention fund is and that is described in the original bill.

Recess.

Out of recess.

SENATOR SHAHEEN: There is actually no fiscal note attached to SB 231, the fiscal note is there because of the revolving fund that is created in the bill. That does not change in the amendment.

SENATOR WHEELER: Senator Shaheen, with asbestos removal in this state, there are exceptions in the law that says that a homeowner can remove their own, are there any exceptions in this amendment that states that the landlords can remove their own?

SENATOR SHAHEEN: There are as long as they get themselves certified. You don't actually have a license, so I suppose you would be certified, if you have three units or less. And yes, if you go through the training, you can do it yourself and a homeowner can do it themselves.

MOTION TO RECOMMIT

Senator Colantuono moved recommit to committee.

Division vote requested.

Yeas: 9 - Nays: 13

Motion to recommit fails.

Question is on the floor amendment.

Floor amendment is adopted.

Referred to the Division on Finance (Rule #24).

SENATOR BLAISDELL: I want you to know that we will have a public hearing on this bill. I want that in the record. You can come down to Finance and we will set up a hearing as soon as possible.

SENATOR SHAHEEN: What you are getting is a resolution relative to SB 112 which would send the bill to the court for a ruling on constitutional questions. I would urge you to support the resolution. I would like to point out that there is just one mistake that Legislative Services made that the Clerk will correct. If you look on page one, line 18. It refers to article 14 of the Constitution, that should be article 12. I move that the body adopt this resolution.

Senator Shaheen offered the following resolution:

SR 6

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

requesting an opinion of the justices on SB 112.

Whereas, SB 112, "An Act prohibiting a defendant in a sexual assault case from bringing certain civil actions against the victim," which proposes to amend RSA 632-A by adding a new section prohibiting a defendant in a sexual assault case from bringing a civil action based upon statements or reports made by the victim in the sexual assault case which pertain to an incident from which the criminal action is derived, is pending before the Senate; and

Whereas, the Senate in considering this proposed legislation is unsure and uncertain as to the constitutionality of the proposed limitations on civil actions; now, therefore, be it:

Resolved by the Senate:

That the Justices of the Supreme Court be respectfully requested to give their opinion on the following questions of law:

1. Does the procedure for limitation on civil actions brought by a defendant in a sexual assault case against the victim, as proposed in SB 112, deprive the defendant of access to the courts or other important substantive and procedural rights afforded by the guarantee of equal protection under the provisions of Article 14, Part I of the New Hampshire Constitution or the 5th and 14th Amendments of the United States Constitution?

2. Does the procedure for limitation on civil actions brought by a defendant in a sexual assault case against the victim, as proposed in SB 112, deprive the defendant of due process of law guaranteed by the provisions of Article 15, Part I of the New Hampshire Constitution or the 5th and 14th Amendments to the United States Constitution?

3. Does the procedure for limitation on civil actions brought by a defendant in a sexual assault case against the victim, as proposed in SB 112, violate the defendant's right to a complete and prompt remedy as guaranteed by the provisions of Article 14, Part I of the New Hampshire Constitution?

4. Is the procedure proposed by SB 112 otherwise permitted by the New Hampshire Constitution?

That the senate clerk transmit a copy of this resolution along with a copy of SB 112 to the Justices of the New Hampshire Supreme Court.

Adopted.

SENATOR HOUGH (In the Chair): I would like to take a few minutes to speak to you about an important matter. To begin with, as you undoubtedly have heard, our Sergeant-at-arms, Dick Wiggin, has been taken to the hospital this morning. He is under observation at this time. His condition is serious, but the Chair has no other specific information. To allay rumors, we are concerned, obviously, but when we have factual information, the membership will receive it.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Thursday, March 11, at 4:52 p.m.

Adopted.

LATE SESSION
Third Reading and Final Passage

SB 53, an act relative to third party administrators.

SB 55, an act relative to accident and health insurance and health maintenance organizations.

SB 62, establishing a committee to study child support issues.

SB 70, an act requiring that dogs and cats placed by shelters and pounds be spayed or neutered.

SB 77, an act relative to resellers of telecommunication services.

SB 79, an act also known as the "Kimberly Goss Act", limiting persons arrested for a violent offense while on parole or probation for a similar offense from receiving bail.

SB 98, an act relative to fees charged for processing and approval of residential mortgage loan applications.

SB 116, relative to reporting of treatment or assistance given to victims of domestic abuse and requiring physicians and hospitals to use domestic violence protocol as adopted by the department of justice.

SB 191-FN, an act relative to the New Hampshire real estate practice act.

SB 210-FN, an act relative to the division for children and youth services confidentiality statutes.

SB 217-FN, an act clarifying the laws relative to guardianship and expanding a guardian's powers.

SB 218-FN, an act relative to the child protection act.

SB 220-FN-LOCAL, an act relative to criminal history checks for school personnel and applicants.

SB 224-FN, relative to the statewide education improvement and assessment program and making an appropriation therefor.

SB 248, establishing a committee to study the feasibility of locating a sports stadium in southern New Hampshire.

HB 187-FN, an act authorizing the division of public health services to charge fees for copies of data or statistical information.

HB 336, an act relative to voter registration in cities.

HCR 1, relative to a universal health care program in New Hampshire.

HJR 1, a joint resolution supporting the improvement of primary health care delivery.

Senator Disnard moved that the rules of the Senate be so far suspended as to allow all bills to be placed on Third Reading and Final Passage, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

Adjournment.

March 11, 1993

The Senate met at 4:52 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

I am here to test the limits of your humor for good humor is essential to good leadership. Would you believe, given the things you all seem to get yourselves involved in, I think you should receive combat pay. But since you don't, let me offer some protection prayers. From any economic summit that would be less creative dialogue and more political mud wrestling, good Lord deliver them; From any education legislation that might help the system without helping the student, good Lord deliver them; From any lobbyist who thinks that what is right is determined by whom he or she is paid, good Lord deliver them; From any editor who is a better axe grinder than a Monitor, or a better flame thrower than a Leader, good Lord deliver them; And finally, from any politician who is more interested in the next election than in the next generation; good Lord deliver us all. Amen

Senator MacDonald led the Pledge of Allegiance.

SENATOR PODLES (Rule #44): Mr. President and Members of the Senate, I would like to share with you a letter that was mailed to me and also to the Senate President. It is addressed to the New Hampshire Charitable Trust Fund and it is dated March 1, 1993. "Dear Sir or Madame, it is my privilege and honor to be serving this Session as the Chaplain to the New Hampshire Senate. Despite my protestations each time I am present there, the powers see to it that I am paid $26.25 for what I would much rather offer as a free gift. Through the kindness of my own Senator, Eleanor Podles, I have learned that several years ago, the Governor and the legislature established a New Hampshire Childrens Trust Fund and that much good work is being done with that money. Accordingly, it is my intention to direct to this fund, any money that I receive this session through my work as Chaplain to the Senate. Please find enclosed my first check in the amount of $78.75. Thank you for this opportunity that you provide me of sharing some of what I have been given with some of the little ones of our state. God Bless you in your work".

Reverend Jones, on behalf of the New Hampshire Childrens Trust Fund Board members and myself, I want to publicly thank you for your generosity. It means that the Children's Trust Fund gets double the money, because all private contributions are matched by the state, dollar for dollar. A 1986 statute permits the Board to spend only the interest earned for grant-making purposes to non-profit organizations for the Prevention of Child Abuse and Neglect. It's supposed to prevent abuse before it occurs. Since only the interest is spent, the principal will always be there to fight child abuse. We need to raise $250,000 to meet our goal of $1 million. It has been seven years ago since the State Senators contributed their one year's salary to send the Children's Trust Fund on its way. I ask all of you to lend whatever support you can with our fund-raising efforts. Help the children in your community to have a chance to have a decent life and I promise you that you will make a difference. David, you have issued a challenge and we will take up your challenge, and I thank you for that.

SENATOR HOUGH (In the Chair): Senator Podles, if I understand your remarks correctly and I was here in 1986, that was the time that each of us did contribute our one year's salary of $100 and the Chair will rise to your challenge and I will give, through you, not only my $100, but my $112.50 and I would challenge my colleagues to meet that pledge.

INTRODUCTION OF HOUSE BILLS

Senator Lamirande resolved, that in accordance with the list in the possession of the Clerk, House bills numbered 108-HJR 2 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 108-LOCAL, permitting counties to establish special equipment accounts for registers of deeds. Executive Departments and Administration committee.

HB 110, relative to use and derivative use immunity. Judiciary committee.

HB 115, repealing reporting requirements for fish or game propagation licensees; and limiting the time bob-houses may be on public property and adding a penalty for violations. Wildlife & Recreation committee.

HB 116, relative to fly fishing on the Connecticut River. Wildlife & Recreation committee.

HB 137-FN, lowering the level for legal intoxication under the DWI laws from .10 to .08. Transportation committee.

HB 140-FN-A, establishing a task force to study economic incentives and technological opportunities to assist state and local governments and business and industry to increase waste reduction and recycling. Environment committee.

HB 151-FN, permitting the Department of Fish and Game to issue a special deer license to certain licensees, authorizing the executive director to determine the number of deer taken by an archery licensee, and relative to deer tags. Wildlife & Recreation committee.

HB 159, designating a portion of the OHRV registration fees for trail acquisition. Wildlife & Recreation committee.

HB 167, clarifying circumstances under which a person is justified in using deadly force. Judiciary committee.

HB 177-FN-LOCAL, establishing procedures for the removal of town clerks, tax collectors and treasurers. Executive Departments and Administration committee.

HB 179-FN, allowing new legislators-elect to receive a mileage allowance for attending the legislator's orientation program. Executive Departments and Administration committee.

HB 215-FN, relative to extradition. Judiciary committee.

HB 253, designating a portion of funds collected under the Oil Pollution Control fund to train and equip personnel in oil spill response. Environment committee.

HB 268, increasing the penalty for certain subsequent offenses of indecent exposure. Judiciary committee.

HB 280, relative to zoning requirements for family day care homes. Public Affairs committee.

HB 284, regarding notice for condominium association meetings and relative to voting by condominium owners. Banks committee.

HB 290, establishing priority of real estate tax liens. Ways & Means committee.

HB 295, requiring commercial establishments that offer public docking or launching facilities to provide toilet facilities. Environment committee.

HB 307, permitting municipalities to contract with their road agents without competitive bidding. Public Affairs committee.

HB 310, relative to the definition of "bedroom" for the purposes of determining septic system size. Environment committee.

HB 312, relative to protecting New Hampshire's heritage landmarks and establishing a review process. Environment committee.

HB 322, requiring insurers to provide insureds with a statement reflecting the dollar amount of allowable benefit for medical procedures. Insurance committee.

HB 328, requiring the refund of mortgage loan application fees and costs when a loan application is not processed due to the financial failure of the mortgage lender. Banks committee.

HB 332, authorizing municipalities to create revolving funds to support public recreation parks. Banks committee.

HB 349, requiring that selectmen or assessing officials be allowed access to property as a prerequisite to appeal of any matter pertaining to a property tax. Public Affairs committee.

HB 351, relative to the positions of town clerk, town treasurer, and tax collector and the terms for such positions. Public Affairs committee.

HB 352, requiring DWI offenders to supply a certified copy of their New Hampshire driver's license record at the time of enrollment into an impaired driver intervention program. Judiciary committee.

HB 356-LOCAL, relative to legal disputes between the state and political subdivisions of the state regarding Article 28-a violations. Judiciary committee.

HB 358, allowing the creation of or participation in professional corporations by physician assistants. Public Institutions, Health & Human Services committee.

HB 376, relative to the election by nonprofit corporations and municipalities to reimburse unemployment compensation benefits or to pay contributions to the unemployment compensation fund. Insurance committee.

HB 393, relative to duties of supervisors of a checklist. Executive Departments and Administration committee.

HB 396, establishing a committee to study mechanisms of funding and providing long-term care for the elderly. Public Institutions, Health & Human Services committee.

HB 399, removing a certain portion of the blue laws regarding Sunday business activity and relative to certain police regulations. Judiciary committee.

HB 412-FN, allowing liquor licenses for billiard facilities. Ways and Means committee.

HB 418, relative to costs of prevailing employees under the Workers' Compensation Law. Insurance committee.

HB 426-FN, establishing a separate account in the Oil Discharge and Disposal cleanup fund to reimburse owners of bulk storage facilities for the costs associated with gasoline and diesel product spillage. Environment committee.

HB 454-FN, removing the requirement that courts approve temporary transfers of county prisoners. Judiciary committee.

HB 456-FN, modifying the bail statutes relative to persons arrested for violating certain protective orders. Judiciary committee.

HB 464-FN-A, recognizing merchant marines who served in World War II as World War II veterans. Public Affairs committee.

HB 470-FN-LOCAL, allowing selectmen or assessors to abate interest accrued on property taxes. Executive Departments and Administration committee.

HB 476, establishing the crime of stalking. Judiciary committee.

HB 478-LOCAL, allowing municipalities to determine the net income requirements under the optional adjusted elderly property tax exemption. Public Affairs committee.

HB 481, enabling municipalities to enact noise ordinances. Environment committee.

HB 483-FN-LOCAL, relative to the licensing of dogs. Wildlife & Recreation committee.

HB 486, designating segments of the Piscataquog River for the Rivers Management and Protection program. Environment committee.

HB 488, authorizing the Commissioner of Corrections to recommend a prisoner to the Adult Parole Board if the prisoner has completed certain programs or treatment. Public Institutions, Health & Human Services committee.

HB 489, authorizing the establishment of municipal trails. Transportation committee.

HB 494, establishing a joint committee on recodification of solid waste laws. Environment committee.

HB 505, relative to implied consent for blood alcohol content testing in certain motor vehicle fatalities. Transportation committee.

HB 506, expanding the time during which a person is prohibited from using a light to locate wild birds or wild animals. Wildlife & Recreation committee.

HB 510, relative to certificate of election blanks, write-in votes, and the Emergency Interim Succession Act, and establishing a committee to study the enforcement of the election laws relative to political expenditures and contributions. Executive Departments and Administration committee.

HB 518, relative to automobile insurance premium rates. Insurance committee.

HB 522, relative to the observance of Memorial Day. Public Affairs committee.

HB 537, relative to registration of sexual offenders. Judiciary committee.

HB 543, allowing municipalities to combine the offices of tax collector and treasurer. Public Affairs committee.

HB 560, changing procedures regarding appointment of guardians of minors. Judiciary committee.

HB 562, relative to meetings regarding security issues in correctional facilities. Public Institutions, Health & Human Services committee.

HB 577, allowing municipalities to post warnings regarding the ice on great ponds. Wildlife & Recreation committee.

HB 578, repealing the requirement that grandparents pay all costs arising out of petitions for visitation with their grandchildren. Judiciary committee.

HB 581, relative to the use of an altered form of identification to purchase alcoholic beverages. Judiciary committee.

HB 591-FN-LOCAL, authorizing counties and municipalities to allow payment of local taxes, fees and other charges by credit card. Banks committee.

HB 600-FN-LOCAL, relative to candidates who seek nomination by nomination papers. Public Affairs committee.

HB 602-FN, relative to claiming assets which have escheated to the state. Banks committee.

HB 603-FN-LOCAL, relative to energy efficiency in state facilities. Environment committee.

HB 615-FN-LOCAL, recodifying the municipal budget law. Executive Departments and Administration committee.

HB 669-FN, transferring the right to appeal in certain cases from a decision of the labor commissioner on workers' compensation from the superior court to the Compensation Appeals Board. Insurance committee.

HB 671-FN, increasing the term of a resident's license to carry loaded pistols and revolvers. Judiciary committee.

HCR 8, encouraging Congress to increase the reimbursement rate to municipalities for government-owned land. Economic Development committee.

HJR 2, expressing the opposition of the general court to federal mandate legislation and asserting its right to determine and impose appropriate sanctions upon the driving privileges of offenders within its own state boundaries. Public Affairs committee.

COMMITTEE REPORTS

HB 447-A, an act to acquire land at Odiorne Point and making an appropriation therefor. Capital Budget committee. Ought to Pass with Amendment. Senator Baldizar for the committee.

1888B

Amendment to HB 447-A

Amend the title of the bill by replacing it with the following:

AN ACT
to acquire land at Odiorne Point and making an appropriation therefore, authorizing the use of certain remaining balances for Hampton Harbor dredging, and making an appropriation therefore for Hampton Harbor dredging.

Amend the bill by inserting after section 2 the following new sections and renumbering the original section 3 to read as 7:

3 Balance Transferred. Any balance remaining of the appropriation for the dredging of the Portsmouth Harbor and the Piscataqua River, as provided in 1987, 399:1, VII, B shall be transferred to the department of resources and economic development to be utilized for Hampton Harbor dredging in addition to the appropriation in 1988, 224:1, IV(D).

4 Appropriation Increased. Amend 1988, 224:1, IV(D) to read as follows:

D. Hampton harbor dredging [350,000] ***$ 500,000***

5 Total Appropriation Increased. Amend the total appropriation for paragraph IV and the total state appropriation for section 1 of 1988, 244:1 to read as follows:

Total appropriation paragraph IV $ [571,540] ***$ 721,540***
Total state appropriation section 1$ [16,612,540] ***$16,762,540***
* To be 5-year bonds.

6 Bond Amount Increased. Amend 1988, 224:2 to read as follows:

224:2 Bonds. To provide funds for the appropriation in section 1 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of [$16,612,540] ***$16,762,540*** and for said purposes may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A.

AMENDED ANALYSIS

This bill makes an appropriation to the department of resources and economic development for the purpose of acquiring land and buildings at Odiorne Point. Any funds appropriated to the department shall be repaid to the general fund from state park fund revenues no later than July 1, 1997.

This bill also transfers the remaining balance of the appropriation made for the dredging of the Portsmouth Harbor and the Piscataqua River to the Port Authority made in 1987, 399:1 to the department of resources and economic development to be used for the Hampton Harbor dredging in addition to the appropriation in 1988, 224:1, IV(D).

This bill also appropriates an additional $150,000 for the Hampton Harbor dredging.

SENATOR BALDIZAR: The Capital Budget committee voted unanimously in favor of HB 447-A as amended by the House and the Senate. This bill is on the fasttrack because the purchase of land at Odiorne State Park and the Hampton dredge require our urgent attention. The bill loans $400,000 to the Department of Resources and Economic Development to purchase 3-1/2 acres, a historic house and barn and an island abutting Odiorne State Park. Two hundred thousand dollars of which are federal funds charged against the Land and Water Conservation fund. The remaining $200,000 will be repayed to the general fund by July 1. I think that this is appropriate because there is a historic note that this section of land was the first site of development or settlement in the State of New Hampshire, so I think that it has real historic significance. These properties are surrounded by 65 acres that the state already owns. This purchase will open up the entire area for nature trails and educational exhibits to complement and expand existing facilities at Odiorne State Park. But more importantly, will prevent commercial development in the area... a very serious threat to Odiorne State Park should the state not authorize this purchase. Because of the generosity of the owner, Mr. Ralph Brown, whose health is rapidly deteriorating, and his desire to see his property preserved in the state park system, the state is getting these properties at a real bargain. In monetary terms, these properties are estimated to be worth at least four times the asking price. There was an amendment to this bill and that is the Hampton Harbor dredging. The current state of the harbor threatens public safety and we need to just move forward and pass this quickly so that we can dredge that harbor.

Amendment adopted.

SUSPENSION OF THE RULES

Senator Hollingworth moved that the rules be suspended to put HB 447-A an act to acquire land at Odiorne Point and making an appropriation therefor, on Third Reading and Final Passage at the present time.

Adopted by the necessary 2/3 vote.

Third Reading and Final Passage

HB 447, to acquire land at Odiorne Point and making an appropriation therefor, authorizing the use of certain remaining balances for Hampton Harbor dredging, and making an appropriation therefor for Hampton Harbor dredging.

HB 287, an act relative to petition to the Division of Water Resources by a municipality for dam disrepair. Environment committee. Ought to Pass. Senator MacDonald for the committee.

SENATOR MACDONALD: I move ought to pass.

Adopted.

Ordered to third reading.

HB 318, an act changing the requirements for filing notices of intent to cut and reports of cut. Environment committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: I move ought to pass.

Adopted.

Ordered to third reading.

HB 402, an act encouraging the composting of food wastes and recycling of construction and demolition debris. Environment committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I move ought to pass.

Adopted.

Ordered to third reading.

HB 508, an act permitting a dam to be constructed on Jenness Pond in Northwood. Environment committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: I move ought to pass.

Adopted.

Ordered to third reading.

HB 132-L, an act increasing the borrowing authority of the Bartlett Water precinct. Public Affairs committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I move ought to pass.

Adopted.

Ordered to third reading.

HB 281, an act to Change the Salisbury and Warner town lines. Public Affairs committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I move ought to pass.

Adopted.

SENATOR PIGNATELLI: The floor amendment fixes the bill so that the towns of Salisbury and Warner would only have three years in order to act upon this bill.

Senator Pignatelli offered a floor amendment.

1921B

Floor Amendment to HB 281

Amend the bill by replacing section 3 with the following:

3 Application. The voters of both the town of Warner and the town of Salisbury shall have until June 30, 1996, to vote to ratify the provisions of section 1 of this act according to the referendum procedure set out in section 2 of this act. If the provisions of section 1 of this act are not so rat-

ified by June 30, 1996, the provisions of sections 1 and 2 of this act shall be null and void and shall have no force and effect as of that date, and any proposed change in the town lines of Salisbury and Warner shall require the introduction of new legislation.

4 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill changes the town lines of Salisbury and Warner, subject to ratification by voters of the changes by a 2/3 vote of each town.

The voters of the towns of Warner and Salisbury have until June 30, 1996, to vote to ratify the change in the town lines. After that date, the provisions of the bill expire, and new legislation must be introduced to change the town lines.

Floor amendment adopted.

Ordered to third reading.

HB 498, an act relative to the committee reviewing the laws governing tax-exempt property and studying the concept of and criteria for payment in lieu of taxes by tax-exempt properties. Public Affairs committee. Ought to Pass. Senator Barnes for the committee.

SENATOR BARNES: I move ought to pass.

Adopted.

Ordered to third reading.

HB 112-FN, an act extending public assistance granted to needy and dependent children to otherwise eligible parents or needy caretaker relative and changing a reference from human services to children and youth services. Public Institutions, Health & Human Services committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: I move ought to pass.

Adopted.

Ordered to third reading.

HB 373, an act relative to notification of employees of corrections facilities after exposure to infectious diseases. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: I move ought to pass.

Adopted.

Ordered to third reading.

HB 101, an act categorizing motor vehicle child passenger restraints by age. Transportation committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: I move ought to pass.

Adopted.

Ordered to third reading.

HB 122-FN, an act changing Central Street in the town of Newport to a class II highway. Transportation committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: I move ought to pass.

Adopted.

Ordered to third reading.

HB 124-A, an act repealing an appropriation for an environmental and engineering study and authorization to acquire rights-of-way for construction of a truck lane on U.S. Route 2 in Jefferson. Transportation committee. Ought to Pass. Senator MacDonald for the committee.

SENATOR MACDONALD: I move ought to pass.

Adopted.

Ordered to third reading.

HB 126-FN, an act requiring the Commissioner of Transportation to establish an adopt-a-highway program. Transportation committee. Ought to Pass. Senator Roberge for the committee.SENATOR ROBERGE: I move ought to pass.

Adopted.

Referred to the Division on Finance (Rule #24).

HB 142, an act relative to motorcycle noise levels. Transportation committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: I move ought to pass.

Adopted.

Ordered to third reading.

HB 202, an act allowing use of photographs on file for a duplicate driver's license. Transportation committee. Ought to Pass. Senator Cohen for the committee.SENATOR COHEN: I move ought to pass.

Adopted.

Ordered to third reading.

HB 342-LOCAL, an act relative to the use of revenue derived from parking meters for public transportation systems. Transportation committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: I move ought to pass.

Adopted.

Ordered to third reading.

HB 359, an act making a technical change relative to class II highways. Transportation committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: I move ought to pass.

Adopted.

Ordered to third reading.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

HB 447, to acquire land at Odiorne Point and making an appropriation therefore, authorizing the use of certain remaining balances for Hampton Harbor dredging, and making an appropriation therefore for Hampton Harbor dredging.Senator Currier moved adoption.

Adopted.

ANNOUNCEMENTS

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 101, an act categorizing motor vehicle child passenger restraints by age.

HB 112-FN, an act extending public assistance granted to needy and dependent children to otherwise eligible parents or needy caretaker relatives and changing a reference from human services to children and youth services.

HB 122-FN, an act changing Central Street in the town of Newport to a class II highway.

HB 124-A, an act repealing an appropriation for an environmental and engineering study and authorization to acquire rights-of-way for construction of a truck lane on U.S. Route 2 in Jefferson.

HB 132-L, an act increasing the borrowing authority of the Bartlett Water Precinct.

HB 142, an act relative to motorcycle noise levels.

HB 202, an act allowing use of photographs on file for a duplicate driver's license.

HB 281, to change the Salisbury and Warner town lines.

HB 287, an act relative to petition to the Division of Water Resources by a municipality for dam disrepair.

HB 318, an act changing the requirements for filing notices of intent to cut and reports of cut.

HB 342-LOCAL, an act relative to the use of revenue derived from parking meters for public transportation systems.

HB 359, an act making a technical change relative to class II highways.

HB 373, an act relative to notification of employees of corrections facilities after exposure to infectious diseases.

HB 402, an act encouraging the composting of food wastes and recycling of construction and demolition debris.

HB 498, an act relative to the committee reviewing the laws governing tax-exempt property and studying the concept of and criteria for payment in lieu of taxes by tax-exempt properties.

HB 508, an act permitting a dam to be constructed on Jenness Pond in Northwood.

RESOLUTION

Senator Delahunty moved that the Senate be in recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, and scheduling hearings.

Adopted.

Recess.

Out of Recess.

RESOLUTION

Senator Delahunty moved that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Wednesday, March 24, 1993 at 1:00 p.m.

Adopted.

LATE SESSION

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendment to the following entitled Bill sent down from the Senate:

HB 281, to change the Salisbury and Warner town lines.

HB 447-A, to acquire land at Pdiorne Point and making an appropriation therefor, authorizing the use of certain remaining balances for Hampton Harbor dredging, and making an appropriation therefor for Hampton Harbor dredging.

HOUSE MESSAGE

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bills:

HB 142, relative to motorcycle noise levels.

HB 342, relative to the use of revenue derived from parking meters for public transportation systems.

HB 508, permitting a dam to be constructed on Jenness Pond in Northwood.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bills:

HB 122, changing Central Street in the town of Newport to a class II highway.

HB 124, repealing an appropriation for an environmental and engineering study and authorization to acquire rights-of-way for construction of a truck lane on U.S. Route 2 in Jefferson.

HB 287, relative to petition to the Division of Water Resources by a municipality for dam disrepair.

HB 318, changing the requirements for filing notices of intent to cut and reports of cut.

HB 402, encouraging the composting of food wastes and recycling of construction and demolition debris.

HJR 1, supporting the improvement of primary health care delivery.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bills:

HB 112, extended public assistance granted to needy and dependent children to otherwise eligible parents or needy caretaker relatives and changing a reference from human services to children and youth services.

HB 132, increasing the borrowing authority of the Bartlett water precinct.

HB 187, authorizing the Division of Public Health Services to charge fees for copies of data or statistical information.

HB 202, allowing use of photographs on file for a duplicate driver's license.

HB 359, making a technical change relative to class II highways.

HB 373, relative to notification of employees of corrections facilities after exposure to infectious diseases.

HB 498, relative to the committee reviewing the laws governing tax-exempt property and studying the concept of and criteria for payment in lieu of taxes by tax-exempt properties.

Senator Currier moved adoption.

Adopted.

INTRODUCTION OF HOUSE BILLS

Senator J. King offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 119 - 565 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 119-FN-LOCAL, relative to the administration and enforcement of the pesticides statutes. Environment committee.

HB 141-FN, modifying the acid deposition control program. Environment committee.

HB 150, prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state. Wildlife & Recreation committee.

HB 200-FN-A, relative to an actuarial audit of the New Hampshire retirement system, paid for from retirement system funds. Insurance committee.

HB 261-FN , transferring ownership of the Seabrook Commercial Fish Pier to the town of Seabrook. Economic Development committee.

HB 382, changing the annual rate of interest on judgments and business transactions. Banks committee.

HB 469-A, allowing the state treasurer to issue bonds to pay for debt issuance costs. Banks committee.

HB 558, requiring the Board of Education to submit its proposed rules relative to standards and statewide testing and assessment to the standing legislative education committees for approval or objections. Education committee.

HB 565, prohibiting hazing. Public Affairs committee.

MOTION TO VACATE

Senator Roberge moved that we vacate HB 565 prohibiting hazing, to the Judiciary committee.

Adopted.

RESOLUTION

Senator Disnard moved that the business of the day being completed, the Senate now adjourn until Wednesday, March 24, 1993 at 1:00 p.m.

Adopted.

Adjournment.

March 24, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

O God, You are the only one who can give to these ordinary politicians the ability to become extraordinary leaders. The newspapers are telling them what to do. The lobbyists are telling them what to do. The PACs and other selfish interest groups are telling them what to do. Why don't You just tell them what to do, and all will be well. Amen

Senator Disnard led the Pledge of Allegiance.

INTRODUCTIONS OF GUESTS
COMMITTEE REPORTS
SUSPENSION OF THE RULES

Senator McLane moved that the Rules of the Senate be suspended to dispense with the referral to committee, the notice in the calendar of a hearing, and the holding of a hearing by the Senate Ways and Means committee whereby the Senate and House committees held a joint hearing on the bill and said hearing was properly advertised in the Senate Calendar.

HB 50-FN-A, an act relative to the Medicaid Enhancement Tax and making an appropriation therefor.

Adopted by the necessary 2/3 vote.

HB 50-FN-A, an act relative to the medicaid enhancement tax and making an appropriation therefor. Ways & Means committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: Mr. President, we have before us in HB 50; the Medicaid Enhancement Bill, $38.2 million will come to the state from this bill in 1994 and $42 billion in 1995. It is important that we pass this bill at this time and send it on to the Governor by the deadline of March 31. So I beg your indulgence. There is no amendment to the bill as it was drafted and heard by the House and Senate and as it has come over to you. The Senate Ways and Means committee had an executive session by individual Senators and it was unanimous that it be passed from that committee. HB 50 revises the Medicaid Enhancement Tax and makes an appropriation therefor, imposes a six percent tax on hospital gross patients service revenues and brings the existing Medicaid Enhancement Tax into compliance with new federal regulations on provider taxes. I

would ask for your indulgence in passing this bill at this time to say that I met as a representative of the President of the Senate, with Doctor Bird yesterday. He is extremely anxious that it go forward. I have talked with those members of the House who hope to make some changes in it in terms of how much the hospitals kept and received, and they have worked out their differences with Doctor Bird and Barry Bodell and we feel that this bill as it is printed and as it is before you, is ready to go forward onto the Governor's desk before the deadline. Thank you.

Adopted.

Ordered to third reading.

SB 203-FN-A, an act clarifying the applicability of the meals and rooms tax to colleges and universities. Ways & Means committee. Ought to Pass with Amendment. Senator McLane for the committee.

2026B

Amendment to SB 203-FN-A

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose and Legislative Intent. This act reforms and clarifies the tax treatment of certain nonprofit educational institutions which provide meals and rooms to students and other persons. The legislature finds that this act is required because application of the existing meals and rooms tax to nonprofit educational institutions has caused substantial confusion due to the uncertainties and infirmities of existing law.

2 Accommodations Provided in Connection with Religious or Charitable Purpose Exempt. Amend RSA 78-A:3, III(c) to read as follows:

(c) An establishment owned by a nonprofit corporation or association operated exclusively for religious[,] ***or*** charitable[, or educational] purposes, and which does not offer sleeping accommodations to the ***general*** public[.];

3 New Subparagraph; Exemption for Accommodations Provided in Connection with Educational Purpose Clarified; Educational Purposes Defined. Amend RSA 78-A:3, III by inserting after subparagraph (c) the following new subparagraph:

(d)(1) A facility or establishment owned or leased pursuant to a long-term agreement by an organization operated for educational purposes, which organization is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, but only if occupancy at such facility or establishment is provided:

(A) To students attending the organization;

(B) To employees, faculty members or administrative officials of the organization or volunteers providing services in connection with the organization; or

(C) To persons other than individuals described in subparagraphs (d)(1)(A) or (d)(1)(B), but only if occupancy at such facility or establishment is provided pursuant to an activity which is related to educational purposes.

(2) For purposes of this subparagraph, "educational purposes" means:

(A) The instruction or training of an individual for the purpose of improving or developing the individual's capabilities;

(B) The instruction of the public on subjects useful to the individual and beneficial to the community; or

(C) With respect to a specific educational organization, the conduct of alumni, student or athletic functions or events.

4 Definition of Rent. Amend RSA 78-A:3, VIII(c) to read as follows:

(c) The term "rent" does not include[:

(1) Rental charges for living quarters, sleeping, or household accommodations to any student necessitated by attendance at a school as defined in this section; or

(2)] rental charges for living quarters, sleeping or household accommodations necessitated by the partial or complete destruction of a person's permanent residence.

5 Meals Provided in Connection with Educational Purposes Exempt. RSA 78-A:3, X(c)(2) is repealed and reenacted to read as follows:

(2) Meals served or furnished by an organization operated for educational purposes, which organization is exempt from federal income taxation under section 501 (c)(3) of the Internal Revenue Code, either directly through facilities owned and operated by such organization or indirectly through a catering or food service enterprise under contract with such organization, but only if such meals are served or furnished:

(A) To students of the organization;

(B) To employees, faculty members or administrative officers of the organization or volunteers providing services in connection with the organization; or

(C) To persons other than individuals described in subparagraphs (c)(2)(A) or (c)(2)(B), but only if the meals are served or furnished pursuant to an activity which is related to educational purposes. For purposes of subparagraph (c)(2), "educational purposes" means:

(i) The instruction or training of an individual for the purpose of improving or developing the individual's capabilities;

(ii) The instruction of the public on subjects useful to the individual and beneficial to the community; or

(iii) With respect to a specific educational organization, the conduct of alumni, student or athletic functions or events.

6 Nonprofit Organization Exemption Clarified. Amend RSA 78-A:3, X(c)(7) to read as follows:

(7) Meals prepared and sold by nonprofit organizations ***other than educational institutions.*** However, if the nonprofit organization is required to have a license issued by the liquor commission other than a license issued pursuant to RSA 178:20, V(l), the meals are taxable meals;

7 Repeal. RSA 78-A:3, IX, relative to the definition of "school" for the purposes of the meals and rooms tax, is repealed.

8 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill clarifies that the college and university exemption from the meals and rooms tax extends to those meals or accommodations which are offered to students, employees, faculty members, administrative personnel or volunteers, but only if such meals or accommodations are provided pursuant to an activity which is related to educational purposes.

SENATOR MCLANE: This bill as amended is very important to the colleges and the universities in New Hampshire. It is designed to clarify the application of the meals and rooms tax to our non profit, educational institutions. The bill is necessary because of substantial confusion caused by the uncertainties of the existing law. In general, educational institutions have been administering the law in a manner in which it

treats as tax exempt all sales of rooms and meals to students and faculty members, employees and other persons. If the sales are in connection with educational purposes; however, a recent letter on January 8, 1993 from the Department of Resources Administration to the chair of the New Hampshire Colleges and University Council, indicates that DRA believes that exemptions offered by current law are dramatically more limited than previously understood and applied by our educational institutions. The committee amendment would clarify the current law so that the obligations of educational institutions under the meals and rooms tax would be certain. I urge your support of the bill as amended.

SENATOR SHAHEEN: Senator McLane, this is just a clarification. Under number two in the amendment, capital A and B, well I guess I am looking at three which is a new sub paragraph two under that, capital A and B. If I were a widget manufacturer and I wanted to do a seminar for all of my employees and everybody else who makes widgets in the state and as part of that we had a luncheon, would that then be exempt from rooms and meals because it would be for educational purposes?

SENATOR MCLANE: No. Because a widget factory is not a non profit educational institution. That is the original definition of who this law applies to.

SENATOR SHAHEEN: What about an organization like the New Hampshire Charitable Society or the Forest Society or some other organization that is a non profit? Would it then apply to them?

SENATOR MCLANE: My impression is that they would pay the meals and rooms tax. If you go to the annual meeting of the Charitable Fund, I don't think that there is ever any thought that you don't pay the meals and rooms tax. That would be my impression. I could not answer that directly. But, I am of the impression that they are not non profit, educational institutions, and I believe that the institution implies that it is there on the grounds of the college or university.

SENATOR SHAHEEN: Thank you.

Amendment adopted.

Ordered to third reading.

SB 167, an act encouraging restaurants to provide recycling bins at their establishments by requiring the establishment of a recycling certificate to be awarded by the Department of Environmental Services. Appropriations committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill establishes a certificate to be presented by the Economic Development and Environmental Services to restaurants that are now recycling and taking care of their waste materials and also to encourage others so that it may be displayed in their institutions to let people know that they are involved.

Adopted.

Ordered to third reading.

HB 424-FN, an act permitting the State Treasurer to pay the costs of bank services from income generated by the state treasury. Banks committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: Mr. President and members of the Senate, all that this bill does is it gives the treasurer authority to pay monthly bank charges from either interest or from the general fund, which ever would generate the most money. If we had this last year and in one instance the state would have earned an additional $39,860. All that it does is allow the State Treasurer the flexibility to negotiate agreements with financial institutions, the best advantages to the state, and provide for higher investment at a higher rate, very simple. For once, we are bringing in something to make money. The treasurer should receive credit for this.

Adopted.

Ordered to third reading.

HCR 8, an act encouraging Congress to increase the reimbursement rate to municipalities for government-owned land. Economic Development committee. Ought to Pass. Senator Barnes for the committee.

SENATOR BARNES: The committee heard testimony on this and there was no testimony against this. It made very good sense to us and we urge the passing of this bill HCR 8. Thank you.

Adopted.

Ordered to third reading.

HB 609, an act designating segments of the Ashuelot River for the rivers management program. Environment committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: HB 609 adds sections of the Ashuelot River to the New Hampshire Rivers Management and Protection Program. The Ashuelot River which flows through Cheshire County is one of our state's most beautiful rivers. It is noted for its white waters and for its fishing resources. The river is also important for the business community for its hydro-electric resources. The bill was unanimously supported in the House and the Senate. HB 609 has also received strong support from all of the surrounding towns that abut the river; therefore, the Environment and Protection committee voted that the HB 609 ought to pass unanimously. Thank you.

Adopted.

Ordered to third reading.

HB 223, an act changing the Bureau of Off Highway Recreational Vehicles to the Bureau of Trails and expanding the bureau's duties. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2000B

Amendment to HB 223

Amend RSA 216-F:5, I as inserted by section 13 of the bill by replacing it with the following:

I. The commissioner shall appoint a New Hampshire statewide trail system advisory committee, whose members shall equally represent the different trail interests involved and the general public, for the purposes of advising [him] ***the director of parks and recreation*** on matters related to the New Hampshire statewide trail system. This committee shall include, but not be limited to, representation from the following: the bureau of [off highway recreational vehicles] ***trails;*** department of

fish and game; office of state planning; [New Hampshire Snow Traveling Vehicle Association; New England Trail Riders Association] ***department of transportation; governor's commission on disability; New Hampshire Snowmobile Association; a representative of wheel vehicle users;*** Appalachian Mountain Club; New Hampshire Municipal Association; Society for the Protection of New Hampshire Forests; [and] a representative of landowners; ***and the bicycle trail coordinator from the department of transportation.***

SENATOR COLANTUONO: This is a fairly simple bill, the only reason that it is so long is because it is changing a name in several different places. It changes the name of the Bureau of Off Highway Recreational Vehicles to the Bureau of Trails. It expands the duties of the bureau. The amendment set forth in the calendar simply adds one more person to the Trail System Advisory committee, namely a representative of wheel vehicle users.

Amendment adopted.

Ordered to third reading.

HB 248, an act to allow municipalities to decide the number of members who serve on recreation or park commissions. Executive Departments and Administrations committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: This was a three minute hearing from Representative Young of Laconia. He was asking that we increase the size of the Laconia Park and Recreation commission. The RSA stated right now a specific size as far as it is set and it should be five members. If this passes it will allow them to have any amount of people available so that they will have a quorum in the future, which they haven't had. I would recommend ought to pass.

Adopted.

Ordered to third reading.

HB 473-FN, an act exempting certain charitable organizations from certain charitable trust filing fees. Judiciary committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: Mr. President and members of the Senate, HB 473 amends the law requiring filing fees for reports filed with the Attorney General to create a narrow exemption from the filing fees for trust with $5,000 or less in assets that are set up for the sole purpose of aiding maintance of state owned property. It deals with the periodic reports required to be filed with the Attorney General which require a $50 filing fee. The filing currently depletes the principal of the trust by one percent or more per filing and this is the reason for asking for the exemption. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 396, an act establishing a committee to study mechanisms of funding and providing long-term care for the elderly. Public Institutions, Health and Human Services committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: This bill was an 18 to 0 vote in the House and on the consent calendar. Representative Amidon came to the hearing, and it

adds a member of the New Hampshire Association of Residential Care Facilities to the committee of long-term care for the elderly and head injured.

Adopted.

Ordered to third reading.

INTRODUCTION OF HOUSE BILLS

Senator Lamirande offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 139 - CACR 9 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 139, relative to requirements for transportation of deer and official seals for fur-bearing animal skins. Wildlife & Recreation committee.

HB 152, changing the time period within which a claim may be submitted against the state. Judiciary committee.

HB 166, relative to felons who own or possess dangerous weapons. Judiciary committee.

HB 184, establishing a study committee to oversee the design and planning of a new Plymouth District Courthouse. Capital Budget committee.

HB 171-FN, changing procedures applicable to the Board of Registration in Medicine, and clarifying the provisions providing immunity from civil action to members of the Board of Chiropractic Examiners, Board of Registration in Medicine, and Board of Examiners of Psychology and Mental Health Practice, and good faith immunity to others who provide information to these boards. Executive Departments and Administration committee.

HB 197, relative to insurance fraud. Insurance committee.

HB 232, permitting the checking of traps at night subject to certain restrictions. Wildlife & Recreation committee.

HB 237, requiring sporting clubs to recommend members to the Fish and Game Commission. Wildlife & Recreation committee.

HB 245-FN, permitting the state treasurer to appoint 2 assistant state treasurers. Executive Departments and Administration committee.

HB 271, adding enhanced criminal penalties for acts of knowing endangerment under the hazardous waste laws. Environment committee.

HB 278, relative to joint building committees for the construction of schoolhouses. Education committee.

HB 288, relative to teacher representation on the New Hampshire Retirement System Board of Trustees. Education committee.

HB 297, establishing a committee to study the economic and environmental benefits of conversion to propane gas. Environment committee.

HB 326, requiring persons who repossess motor vehicles to notify the local police or county sheriff of the repossession. Transportation committee.

HB 340, relative to technical changes in the Small Employer Insurance law. Insurance committee.

HB 341, relative to a small employer insurance availability act and standardized medical benefits forms. Insurance committee.

HB 348, standardizing forms used by insurance companies for medical benefits claims. Insurance committee.

HB 364, relative to the practice of architecture. Executive Departments and Administration Department.

HB 369, requiring the commissioner of the Department of Environmental Services and the director of Public Health Services to study the issue of radon levels in the state of New Hampshire. Environment committee.

HB 390, to limit the terms of office for the members of the United States Congress from New Hampshire. Judiciary committee.

HB 398, relative to driver education reciprocity. Transportation committee.

HB 407, making technical changes to the laws governing the courts. Judiciary committee.

HB 443, relative to the applicability of the state-federal unemployment compensation extended benefit program and relative to the status of the commissioner of the Department of Employment Security as an interested party in cases in controversy at the administrative level. Insurance committee.

HB 457, making fee splitting or accepting fees for referrals by pharmacists or pharmacies, or ownership of a pharmacy by a licensed practitioner, grounds for suspension or revocation of a pharmacy license. Public Institutions, Health & Human Services committee.

HB 503, relative to past legislative enactments authorizing water use in New Hampshire and giving official notice to all water users that the Division of Water Resources will prepare a list of all water users. Environment committee.

HB 529, requiring certain billing procedures for custodial fees on IRA accounts. Banks committee.

HB 555, relative to freshness dating on sandwiches. Public Institutions, Health & Human Services committee.

HB 559, allowing a customer to terminate service from a water utility. Public Affairs committee.

HB 571-FN, establishing the emissions reduction credits trading program and creating a committee to study emissions reduction credits trading. Environment committee.

HB 575-FN, limiting dog training and authorizing the executive director of fish and game to issue permits for the use of bear dogs to control agricultural and property damage. Wildlife & Recreation committee.

HB 585-FN, requiring state agencies to purchase recycled materials. Environment committee.

HB 592-FN-A, establishing a committee to study the state's economic development activities. Economic Development committee.

HB 601-FN-A, exempting from the real estate transfer tax certain transfers between land trusts and housing cooperatives. Ways and Means committee.

HB 605-FN-A-LOCAL, changing the percentage of a municipality's share for local bridge improvement. Capital Budget committee.

HB 612-FN-LOCAL, relative to changes in the maximum weekly benefit amount for unemployment compensation. Insurance committee.

HB 620, relative to unemployment benefits for domestic workers. Insurance committee.

HB 631, modifying administrative penalties to be paid to the director of Safety Services and deposited into the boat safety fund. Transportation committee.

HB 633, repealing inactive study committees and extending the reporting date for certain study committees. Public Affairs committee.

HB 655-FN, requiring the legislature to participate in the waste reduction and recycling program. Environment committee.

HB 665-FN-A, establishing a committee to study the effects and feasibility of a statewide property tax to fund education. Education committee.

HB 673-FN, relative to accounting requirements for moneys received by the State Treasurer. Executive Departments and Administration committee.

HB 682, reducing the number of peremptory challenges to jurors available to both prosecutors and defense in a trial for murder in the first degree. Judiciary committee.

HB 689-FN-LOCAL, relative to funds for students residing in unorganized places. Education committee.

HCR 12, calling for the repeal of the Internal Revenue Service advisory opinion on mileage reimbursements for members of the general court. Public Affairs committee.

HCR 13, urging the cities and towns of New Hampshire to adopt recycling programs. Environment committee.

CACR 9, providing that the governor shall be elected every 4 years. Public Affairs committee.

ANNOUNCEMENTS

SENATOR MCLANE: (Rule #44): I will be very brief. I know better as a politician of 23 years to start a match with the Union Leader. But I would like to make it very clear that I have never cast aspersions on anyone in the Catholic Church and that is not the reason that I am not in favor of the two appointees that the Governor has made to the state Department of Education. I moved to make this statement because Senator Nelson called me and said that she didn't like the remarks that I was making in the paper. So I want to be very clear that I never said those remarks and I never meant it. I would like for that to be on the record.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Thursday, March 25, 1993 at 1:00 p.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 50-FN-A, an act relative to the Medicaid Enhancement Tax and making an appropriation therefor.

SB 167, an act encouraging restaurants to provide recycling bins at their establishments by requiring the establishment of a recycling certificate to be awarded by the Department of Environmental Services.

SB 203-FN-A, an act clarifying the applicability of the meals and rooms tax to colleges and universities.

HB 223, an act changing the Bureau of Off Highway Recreational Vehicles to the Bureau of Trails and expanding the bureau's duties.

HB 248, an act to allow municipalities to decide the number of members who serve on recreation or park commissions.

HB 396, an act establishing a committee to study mechanisms of funding and providing long-term care for the elderly.

HB 424-FN, an act permitting the State Treasurer to pay the costs of bank services from income generated by the state treasury.

HB 473-FN, an act exempting certain charitable organizations from certain charitable trust filing fees.

HB 609, an act designating segments of the Ashuelot River for the rivers management program.

HCR 8, an act encouraging Congress to increase the reimbursement rate to municipalities for government-owned land.

Senator Disnard moved that the business of the day being completed, the Senate now adjourn until Thursday, March 25, 1993 at 1:00 p.m.

Adopted.

Adjournment.

March 25, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

I know that right now most of you are struggling with several very important issues about which your decision may be the decisive one. I know you are trying to figure out what is right. Two things: First, whatever you decide, thank you for being willing to do that struggling for us; thank you. Second, remember the words of Winston Churchill who said, "The nation will find it very hard to look up to the leaders who are keeping their ears to the ground."

Heavenly Father, continually transform the sight of each of these 24 into vision, and rather than looking backwards and around, keep them looking forward and up, so that we may look up to them. Amen

Senator Lovejoy led the Pledge of Allegiance.

INTRODUCTIONS

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bills:

HB 101, categorizing motor vehicle child passenger restraints by age.

HB 50, relative to the Medicaid Enhancement Tax and making an appropriation therefor.

Senator Currier moved adoption.

Adopted.

COMMITTEE REPORTS

HB 230, an act creating a committee to study the allocation of interest resulting from pooled state funds. Banks committee. Inexpedient to Legislate. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, after having listened to the testimony both of the sponsor and the State Treasurer, clearly the way that the interest that is created on the state funds that are on deposit with the five banks in New Hampshire, not only is it fair, but it is the most efficient system that could be promulgated. So for that reason we thought that there was no need, the committee was unanimous in the fact that there was no need for further business. And we would urge the Senate to adopt the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 255-A, an act relative to interest rates on short-term borrowing by the state treasurer. Banks committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: Mr. President and members of the Senate, this bill simply removes the interest rates ceiling on short-term borrowing. Specifically related to RSA 4 which is intended to cover emergency borrowing for facility repairs. While not true at the present, the state could be faced with the situation where interest rates would exceed the six percent limit for five year maturity. The state would be unable to borrow under those circumstances. The treasurer would still have to go to the Governor and Council for approval of the borrowing. But if the interest rate exceeded the six percent, the Governor and Council could not override the provision in the RSAs as currently written. The committee recommended that it ought to pass.

Adopted.

Ordered to third reading.

HB 405, an act relative to financing of manufactured housing. Banks committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: This bill eliminates a provision in the existing statutes that specifies how much time the bank can finance a manufactured home. The banks for the last four or five years have been trying to facilitate the financing of manufactured homes and this is one way to do it. What it basically states is that if you have a manufactured home and you go in and you want to borrow on it or if you want to buy a manufactured home, because manufactured homes are considered to depreciate, you could only loan for a certain length of time. This would remove that cap and allow a bank to finance based on the value of the home. The committee recommended ought to pass.

SENATOR COLANTUONO: Do you mean in simple terms that a bank could give a 30 year mortgage on a mobile home?

SENATOR LAMIRANDE: If they chose to do so, yes.

Adopted.

Ordered to third reading.

HB 528, an act relative to the payment of taxes by electronic funds transfer. Banks committee. Ought to Pass with Amendment. Senator Barnes for the committee.

1998B

Amendment to HB 528

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect upon its passage.

SENATOR BARNES: This bill allows the Department of Revenue Administration to require certain individuals or companies to file their tax returns by electronic transfer. Individuals who had a tax liability the previous year of $100,000 for any one single tax, could be required to file by electronic transfer. They can already do this for federal taxes and most people in this situation would prefer to do this. It benefits the state in that the tax monies would be available immediately. It also benefits the taxpayer, because he or she can wait until several hours before the filing deadline to file their tax return, thereby having that money available to them for the longest period of time. Currently, if a tax is due on Monday, a taxpayer must mail a return by Friday in order for the return to arrive on time. The Department of Revenue Administration may not process the return through the bank until Tuesday morning, and it may be Wednesday or Thursday before the state could actually spend that money. The state loses three or four days in having access to that money and the individual loses three days because the check had to be mailed on Friday. With electronic transfer, the individual would call their bank on Monday afternoon and authorize a transfer of funds directly to the state to meet the Monday afternoon deadline. The state has the money on Monday and the individual can accrue a few more days of interest. Testimony was presented that request have already been made to the department to be able to do this. The amendment merely changes the effective date to upon passage to allow the Department of Revenue Administration the time to get the program set up and the rules written. The committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HCR 3, an act encouraging the emphasis of United States military history into the school curriculum and directing that November 1993 be designated as "Armed Forces History Month." Education committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: The committee recommends ought to pass. This is not a mandate. It is only a resolution to urge the public schools of New Hampshire the inclusion of military history, U. S. military history, accomplishments of veterans from New Hampshire in the social studies curriculum. But it does designate November 1993 as Armed Forces History Month. The students would be made aware of the contributions of New

Hampshire veterans and it will also allow communities that have historical societies to use their expertise in classes to review their local history.

Adopted.

Ordered to third reading.

HB 252-FN-LOCAL, an act allowing the wetlands board to adopt rules to expedite the permitting process for minimum impact projects. Environment committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: This bill allows the Wetlands Board to adopt rules to set up express permitting process for minimum impact projects. The definition of minimum impact exists in the statute already, but to give you an idea of what is involved, let us say that a farmer wants to install a small culvert on his property, that is the kind of thing that would fall under this bill. Both the Wetlands Board and the Conservation group, support this bill because it would allow the limited resources of the board to focus on projects that will have a major impact on the wetlands. The bill should also help speed up the process of other wetlands permits. Thank you.

Adopted.

Ordered to third reading.

HB 312, an act relative to protecting New Hampshire's heritage landmarks and establishing a review process. Environment committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: Mr. President and members, my fine colleague, Senator Russman, wanted to put, "any special bedrooms," under the "historic landmark sites", is that why you wanted to pass it? HB 312 designates all current national historic landmarks which are state owned as New Hampshire Heritage Landmarks. This bill will ensure that New Hampshire Heritage Landmarks are protected from development projects. It is time that New Hampshire take some necessary steps to preserve the heritage and history of its state, hence, the Environment committee recommends that HB 312 ought to pass. I might add that that might be the future home for the Nansen Ski Jump. Thank you.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Russman offered the following Resolution:

SR 7

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

relative to HB 310.

Whereas, The Senate has received a poetic amendment from the House to HB 310, "An Act relative to the definition of 'bedroom' for the purposes of determining septic system size"; and

Whereas, the Senate wishes to exercise its own right to versify on the subject; now, therefore, be it resolved by the Senate:

That the following is the product of the combined efforts of the House and Senate on the difficult subject of properly defining a "bedroom":
The House, with a poetic touch
Decided that "bedroom" be defined as such:
'A room not long and narrow like a hall
No kitchen or bathroom fixtures attached to the wall
No furnace erupting morning and night
Though it does have a window to let in the light
It has a piece of furniture known as a bed
Where late in the evening one lays down one's head
Not a room for dining or holding a dance
It's for sleeping, dreaming and sometimes romance!'
This passed through the House in a moment of levity;
The Senate will act with its usual brevity.
The experienced Senators hereby concur
To the House's description now to defer.
This matter resolved now, we hope, for the best,
Will be with finality well laid to rest.

SENATOR LOVEJOY: In spite of the fact of the very excellent poetry, we are passing a law that defines a bedroom?

SENATOR RUSSMAN: Yes, this is just a resolution, the actual amended version which is rather quite amended will be next, quite amended.

SENATOR LOVEJOY: In that case we will talk about it later.

Adopted.

HB 310, an act relative to the definition of "bedroom" for the purposes of determining septic system size. Environment committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: The committee recommends ought to pass on that and then I do have a floor amendment that I am going to offer.

Adopted.

SENATOR RUSSMAN: The floor amendment that you now have before you should be the snoozer of the afternoon. The new paragraph defines that a bedroom is for determining septic system size. A "Bedroom" means a room furnished with a bed and intended primarily for sleeping. That portion comes from Websters, it's what the DES is using when requested to provide information or definition of what a "bedroom' is. Unless otherwise specified by local regulation with request by a number of municipalities that, I assume, for tax reasons have different ideas of what a "bedroom" is. So in respect to the local communities that may have perhaps wanted to expand the definition of "bedroom" for either tax purposes or whatever, we deferred to them as well and so that it incorporates it so that all of the parties involved, the DIA, the Developing Interest Association and so on and so forth are happy with this definition as you see it before you. We, the committee, would urge the adoption of the floor amendment.

Senator Russman offered a floor amendment.

2062B

Floor Amendment to HB 310

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Bedroom Defined for Determining Septic System Size. Amend RSA 485-A:2 by inserting after paragraph XIX the following new paragraph:

XX. "Bedroom" means a room furnished with a bed and intended primarily for sleeping, unless otherwise specified by local regulations.

AMENDED ANALYSIS

This bill defines a bedroom for the purposes of determining the load on a sewage or waste disposal system.

SENATOR LOVEJOY: Would you believe, Senator Russman, that I am perfectly satisfied with your amendment?

SENATOR RUSSMAN: Thank you very much, I appreciate that.

SENATOR HOLLINGWORTH: Senator Russman, I know that your usually extremely hard work at definitions and how important you review them in the RSAs, but I am wondering how you would define, 'intended primarily for sleeping'? I mean, is that definition not a little vague?

SENATOR RUSSMAN: Well I could say that you caught me sleeping, but it would not be appropriate. So I would tell you that if you pick up Webster's off of the table, that would be the definition right out of the dictionary, and that is what DES has been using because of the various controversies over this. They decided and opted to take the definition from the dictionary as a source and that is what is used. So, I suppose it could be to some degree, but obviously, in terms of sizing septic systems, it has been very difficult in many cases to try to decide what is and what isn't a bedroom and that is why the option has also been left open for municipalities to be more severe or less severe in terms of what their definitions would be.

SENATOR HOLLINGWORTH: Senator Russman, if I have a motel and I decide that instead of having a bed in the room, because it says furnished with a bed, and I want to have a couch in the room that they are going to sleep in, would this mean that it would not be a bedroom?

SENATOR RUSSMAN: I suppose that would depend on if it was a castro convertible or not. But the realities of it are that for septic system sizing, obviously, if the building permit is for a motel, I suspect that you are going to be held to a standard that would apply with this definition. I don't know if that fully answers your question, but that is the best that I can do under the circumstances.

SENATOR BALDIZAR: Senator Russman, I just wanted to ask you if you see any problems with the enforceability of this or that there might be the need for an oversight committee or something?

SENATOR RUSSMAN: Ah. I don't know.

SENATOR COLANTUONO: Often times when the town building inspector or the septic inspector or whatever, has to make a decision on sizing, he or she is doing it on new construction, so they are just empty rooms at that point, so how do we determine what's a bedroom when it's new construction?

SENATOR RUSSMAN: Many times, matter of fact, I think one of the municipalities from your district, Senator, I believe, has a definition that they use in terms of virtually rooms that are on the second floor and so on and so forth as far as no matter what is in them as far as trying to decide for taxes and for septic system size and that is why it was left for the local towns to have their own definitions in actually establishing what the building regulations would be. BCOA I understand, The Building Code of America, I understand, has an additional definition in it for 'bedrooms' and it would be obviously nice to have one for all, but apparently all are not for one. Appraisers use something else in that respect as

well, I am told. I am not so sure what precipitated this except for apparently somebody went to DES and wanted a definition and they had not gone through a rule making process to actually come up with a definition. My understanding is that they decided to take the dictionary definition as the simplest way rather than get involved in a controversy over it. Then some of the towns came and said, "gee, we already have a definition and we want to use it, we have been using it for years", therefore we thought that we should defer to them as well.

SENATOR COLANTUONO: I guess my concern is that we are not really giving them much of a definition here. If they don't have a local regulation because we are not really specifying the answer to that problem. What about the towns that have no other regulation about it, how are they going to answer that question? This is an important question for a homeowner who is trying to build a house and build a septic system that is the right size.

SENATOR RUSSMAN: I think the obvious answer is that when they take their plans and they go to the application, obviously the question is what are going to be the bedrooms for? And DES admittedly has to rely to some degree on the honesty of the person making the application process. When they actually put this down that it is going to be a bedroom, they can't second guess because somebody two years later may buy the house with seven children or something or seven people live there instead of four. So I mean it is difficult that it is an area that I am not sure that it is going to be settled as well as we would like it to be by this definition.

Floor amendment is adopted.

Ordered to third reading.

HB 426-FN, an act establishing a separate account in the oil discharge and disposal cleanup fund to reimburse owners of bulk storage facilities for the costs associated with gasoline and diesel product spillage. Environment committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: The Environment committee unanimously asks that you pass this bill on from the House for underground storage facilities. It expands what the underground storage facility would cover, the fund, and it will make it easier for when there are problem costs associated with gasoline or petroleum products spillage to recover those cost.

Adopted.

Ordered to third reading.

HCR 9, an act relative to population policy and environmental preservation. Environment committee. Ought to Pass. Senator Russman for the committee.

Senator Russman moved to have HCR 9 an act relative to population policy and environmental preservation, laid on the table.

Adopted.

LAID ON THE TABLE

HCR 9, an act relative to population policy and environmental preservation.

HB 277-LOCAL, an act extending the powers of heritage commissions to historic district commissions. Executive Departments and Administration committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill allows the Historic Commissions to assume the compositions and the duties of the Heritage Commission, if that is okayed by the local legislative body. It also allows them to hold meetings and to carry out their duties and to expend money without the approval of the local legislative body. We move ought to pass.

Adopted.

Ordered to third reading.

HB 428-FN-LOCAL, an act authorizing the county convention for Rockingham County to employ a delegation coordinator. Executive Departments and Administration committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: This bill specifically allows Rockingham County to hire a delegation coordinator to assist the delegation in their various duties. Hillsborough County already has this power and Rockingham County is a county almost as large as Hillsborough and it has almost as many representatives in the delegation and it needs this authority. There is no charge to the state since it is a county obligation.

Adopted.

Ordered to third reading.

HB 120, an act mandating that workers' compensation benefits collected under New Hampshire law be the exclusive remedy for a person injured in New Hampshire. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to move ought to pass on HB 120. To our surprise, the bill was brought in because in a recent court case it was ruled that someone from Maine could claim on the New Hampshire's workers' compensation or vice versa and we wanted to make it clear that anyone injured in New Hampshire . . . it would only benefit for New Hampshire's workers' compensation benefits. This bill we believe will correct that problem and clear up what has been a problem that has just started occurring in New Hampshire.

SENATOR LOVEJOY: Senator Hollingworth, if a New Hampshire company doing work in another state had an injured worker, how would that apply?

SENATOR HOLLINGWORTH: I believe that if they were covered under workers' compensation in New Hampshire that the company came from New Hampshire, then they would be covered under New Hampshire. If they were paying workers compensation into Vermont or Maine or whatever state they were paying, it would be under that state. It would be to whatever state that they pay their workers' compensation claims to.

SENATOR LOVEJOY: Would this apply if perhaps a New Hampshire firm is working as a subcontractor with a New Hampshire crew in another state for a general contractor?

SENATOR HOLLINGWORTH: Then it would be if they were paying under that other state's workers' compensation. That state would be collecting for the workers' compensation and then it would be that state that would have to pay for them. What was happening was that they were double dipping. They were collecting both in New Hampshire and in Maine and this is to prevent that from reoccurring.

SENATOR FRASER: I would like to see if I could answer Senator Lovejoy's question. Normally, Senator, if I understood your question, accord-

ing to the law of the state where the person or place is doing business is where that person was hired. If an employee, even if he is working for the sub contractor, if the general contractor is in New Hampshire and the sub is in Maine and he was hired in Maine, Maine compensation would apply. As Senator Hollingworth clearly articulated, one of the problems that we have had is that we learned that there have been people collecting from both sources and that is why this bill is so important.

Adopted.

Ordered to third reading.

HB 183-FN, an act relative to eligibility for parole. Judiciary committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: During the last session the legislature passed a law that said if you had your parole revoked, you had to go back and serve at least three months and if it was revoked for a serious crime, it had to be revoked for at least six months. In practice, that has proven not to have worked very well. There are ways to get around it and it takes away discretion from the Parole Board, and it led to a lot of unintended consequences that the people in the Corrections Department and the Parole Board felt were not appropriate. So Representative Sytek put this bill in simply to repeal that. It is going to save the state about half a million dollars according to the fiscal note. It basically returns the discretion to the Parole Board so that they can require a dangerous parolee to serve maybe even more than that but not require the non dangerous parolees to have to serve mandatory time with no real reason. So the committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 386, an act establishing a committee to study the district court system. Judiciary committee. Re-refer to committee Senator Podles for the committee.

SENATOR PODLES: Mr. President and Senators, HB 386 establishes a committee of legislators, judges, judicial council members, executive counselors and attorneys to study the district court system specifically, jurisdiction, weighted case loads, gender balance, judicial salaries and benefits. And whether the judges should be full or part time or a combination. On the recommendation of the sponsor and also of Judge Kelly, the bill is referred to allow more time to digest and implement the legislative changes that we just enacted last year as a part of the omnibus bill. So the committee recommends re-refer.

Committee report of re-refer is adopted.

HB 460, an act allowing the court to order offenders to pay restitution to the Victims' Assistance Fund. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, HB 460 was introduced at the request of the Attorney General. The bill allows the court to order offenders to pay restitution to the Victims' Assistance Fund for money awarded to the crime victim only if restitution will rehabilitate the offender and restitution will replenish the Victims' Assistance Fund in that the fund has not been reimbursed for the monies expended from another source. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 199-FN, an act requiring municipalities to use state police forms for license applications and licenses to carry pistols and revolvers. Public Affairs committee. Ought to Pass. Senator Barnes for the committee.

SENATOR BARNES: All that this bill does is make all the permits throughout the state the same, the same form. There is no cost to this. The cities and towns will receive these forms and the cost is paid by the permit fee. This will solve a great problem. It will be just one form for the whole state and it is used by the state police. The committee voted 4 to 0 on this. I would appreciate your support on ought to pass.

SENATOR COHEN: Senator Barnes, I just wanted to make sure that this in no way would stand in the way of a municipality which if they so chose to have different, perhaps more strict, some would say more reasonable laws regulating handguns, that this in no way would affect municipalities' ability to make a stricter law regarding the possession of handguns?

SENATOR BARNES: My understanding is no.

SENATOR COHEN: Thank you.

Adopted.

Ordered to third reading.

HB 224-FN-LOCAL, an act relative to the organization, accountability and liability of municipal fire departments. Public Affairs committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This bill adds firefighters, chiefs and departments to the definitions and relationships under RSA 154:1. It establishes municipal rights and responsibilities, it establishes the definition of private fire fighting unit and regulation of such and it establishes liability to fire fighters and fire fighting units. The bill received no opposition and it was supported by the New Hampshire Municipal Association as well as the New Hampshire Fire Marshall. The committee voted unanimously ought to pass and we would appreciate your support.

Adopted.

Ordered to third reading.

HB 293, an act relative to notice to tenants prior to the sale of a manufactured housing park. Public Affairs committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill is relative to a notice to tenants prior to the sale of a manufactured housing park. At the present time it reads, "this notice shall include a copy of the written offer which sets forth a description," and so forth. The bill does one thing. It says that, "this offer shall include a copy of the signed", the word 'signed' is added before 'written' and that is all that it does is make this more efficient. We recommend ought to pass.

Adopted.

Ordered to third reading.

HB 111, an act repealing the pre-admission screening program for persons entering intermediate care or skilled nursing facilities. Public Affairs committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This has been repealed because it is already covered under another section under OBRA, the Omnibus Budget Reconciliation Act. We moved ought to pass.

Adopted.

Ordered to third reading.

HB 135-FN, an act exempting certain properties from the long-range planning process prior to the sale of the property by the Division of Human Services. Public Affairs committee. Ought to Pass. Senator Wheeler for the committee.

SENATOR WHEELER: Yes, this bill would speed up the process when the Division of Human Services acquires properties because of the lien. The Division testified that they have had problems with vandalism in the past and that it would keep them from having to drain pipes and boilers and things like that and they could just close up the property quicker and the committee recommends ought to pass.

Recess.

Out of recess.

Adopted.

Ordered to third reading.

HB 241-FN, an act creating a committee to study the establishment of procedures for medical decision-making on behalf of patients unable to make decisions for themselves. Public Affairs committee. Ought to Pass with Amendment. Senator McLane for the committee.

2017B

Amendment to HB 241-FN

Amend section 1 of the bill by inserting after paragraph X the following new paragraph:

XI. A member from the New Hampshire Nurses Association, appointed by such association.

SENATOR MCLANE: This bill started out as a way to facilitate the process for doctors when someone did not have a living will or a durable power. The necessity of deciding who made the decisions when the person could not make the decisions for themselves. We thought that it was a fairly simple straight forward bill, but I think that we learned in this whole matter of life and death that it is very complicated. We first had to put in an amendment for the Christen Scientist and then it became obvious that the doctor was going to have to consult with every one of the children in the family. Finally what we decided to do was to go back to the process that had worked so well for the living will and the durable power, which is that you get all of the players in the room, the doctors, the lawyers, the churches, the nurses, the hospice people, and you work out a solution that is best for everyone. For that reason, you have a study committee before you. We have added the Nurses Association because they asked to be part of this. We will be meeting over the summer or someone will; and hopefully, come up with a bill that will make this process helpful for everyone and not just encourage the lawyers to attack it. Thank you.

Amendment adopted.

Ordered to third reading.

HB 324, an act relative to conditional discharge of a patient under the mental health laws. Public Affairs committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: The bill modifies the process for revocation of conditional discharge for mental health patients. In lieu of requiring a psychiatrist to examine a patient and determine as to whether a discharge should be revoked as for provided for in RSA 135. The psychiatrist may designate a treatment team to make this determination. The bill adds a provision allowing a physician or the treatment team to determine the facility that they may be sent to. It can be closer to home under this bill. The patient does not have to return to the state hospital if there is a closer place. It also removes the justice of the peace from being one of those steps that it has to go to through the process. Actually what it does is when the mental patient is having problems it addresses it at that time and on a much more quicker and more efficient manner. We recommend ought to pass.

Adopted.

Ordered to third reading.

HB 488, an act authorizing the Commissioner of Corrections to recommend a prisoner to the Adult Parole Board if the prisoner has completed certain programs or treatment. Public Affairs committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This allows the Commissioner of Corrections to recommend a prisoner's early parole. If the prisoner has been sentenced to the state prison for an offense which was other than capital or first degree or second degree murder, manslaughter or any of those serious offenses, if the prisoner had been assigned a course and a program to complete and he did it favorably, and if the Commissioner of Corrections has notified the Parole Board and they are in agreement, and if the Commissioner of Corrections has had it approved by the judge, then they can allow the Parole Board to let that person be paroled. We recommend ought to pass.

Adopted.

Ordered to third reading.

HB 562, an act relative to meetings regarding security issues in correctional facilities. Public Affairs committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: The group asked us that the non public sessions be allowed for anything that would be as security to the institutions, whether it be the county institution because the state prison already has it or anything that would affect the public safety, the staff's safety or the inmates' safety. They did give us an example of what happened in one of the institutions, which if that information had gotten out prior to having a meeting and addressing it there could have been problems. Afterwards, it wasn't too bad. We recommend ought to pass.

Adopted.

Ordered to third reading.

HB 598-FN, an act authorizing the medical examiner to release corneas in certain cases for use in corneal transplants. Public Affairs committee. Ought to Pass with Amendment. Senator McLane for the committee.

2016B

Amendment to HB 598-FN

Amend RSA 291-A:7-b, I(c) as inserted by section 1 of the bill by replacing it with the following:

(c) No objections to the donation were made known by the decedent prior to his death or by the decedent's spouse or next of kin or by an agent of the decedent to the chief medical examiner or designee.

SENATOR MCLANE: This bill authorizes the chief medical examiner or his designee to release corneas to . . . the New England Eye Bank has made the request. The body is under the examiner's jurisdiction. Apparently there is a sort of one hour window in which corneas can be transplanted and used. There is a tremendous need for these corneas and if the coroner can't find the family within the hour, they can not remove the corneas. Removing the corneas is much like removing a crystal from a watch, there is no disfigurement in any way of the body. This would allow the medical examiner in cases where there is no known objection where the person either has an organ donors card, a living will or is not a member of the Christian Science religion which does not approve of organ transplants. So the bill would allow . . . it would speed up the process so that corneas are available.

SENATOR BARNES: Senator McLane, if a person doesn't have that donor card in their possession when the medical examiner's designee has that person, are the corneas going to be taken?

SENATOR MCLANE: The bill makes clear that in the absence of an objection and obvioulsy the dead person can't object, but in the absence of either something that people know, if the person is in the hospital for instance and they have made clear that they object, it turns it, instead of saying a positive thing, which is, "I want an organ transplant if I die", it is a negative. That if you don't know that the person objects then you can go ahead and harvest the cornea. Maybe harvest isn't a very nice word.

SENATOR BARNES: Senator McLane, why don't we include heart transplants and other items of the body such as liver, why do we just stick to the corneas?

SENATOR MCLANE: I think it's very clear that is a very invasive thing that taking someone's heart or their lungs or whatever for an organ transplant is a very different thing than taking a cornea from the eye and that is the first reason. The second reason is that in the event of an organ transplant, I don't think there is the time factor that there is with the cornea. After an hour or so the cornea isn't transplantable. That is the reason for the rush.

SENATOR BARNES: To bring up a good point the cornea is, would you believe, the cornea isn't the whole eye. You are not taking the person's eye out, you are just taking part of the eye?

SENATOR MCLANE: Oh, no. You would never know if someone had taken a cornea. It is like taking a fingernail, it is the same thing. It is a little more complicated than that. But I think that the need is great for them.

Amendment adopted.

Ordered to third reading.

HB 489, an act authorizing the establishment of municipal trails. Transportation committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: This is enabling legislation which the towns may take advantage of should they wish to do so. It sets up a procedure for them to set up trails as well as to change back to a non trail status. It attempts to answer the problems that some abutters might pose with the division in the two classes of trails. It also defines who is to maintain the trails and limits the liability thereunder. If anyone has had the chance to read the statement of purpose, it is pretty explicit and the committee voted that the bill ought to pass.

Adopted.

Ordered to third reading.

HB 117, an act limiting the possessing or taking of marine mammals and prohibiting the taking of a fin fish or crustacean with mobile gear and salmon and striped bass with any netting. Wildlife & Recreation committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: This bill is at the request of the Department of Fish and Game, basically a housekeeping measure. Federal law currently preempts state law with regard to these issues. We need to take our current law off of the books. The stock of some of these specific marine animals and fin fish and crustaceans are being depleted. The department needs a flexibility to respond to the concerns about over fishing. There was no dissent to the committee which recommends a vote of ought to pass.

Adopted.

Ordered to third reading.

HB 118, an act repealing the prohibition against fishing on a certain portion of the Winnicut River. Wildlife & Recreation committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: HB 118 is a housekeeping measure, it was requested by the Fish and Game Commission. All the regulations pertaining to fishing and prohibitions to fishing in the vicinities of fishways with the exception of the fishway in the Winnicut River are done under administrative rules. They would like this section, RSA 114:6-A and then they will TAPE INAUDIBLE so that all of their rules will be in the same place.

SENATOR BARNES: Could you enlighten me or perhaps some of the other members in the chamber on where the Winnicut River is?

SENATOR ROBERGE: It is in Senator Hollingworth's district.

Adopted.

Ordered to third reading.

HB 153, an act prohibiting the buying and selling of bear. Wildlife & Recreation committee. Ought to Pass with Amendment. Senator Wheeler for the committee.

2001B

Amendment to HB 153

Amend the title of the bill by replacing it with the following:

AN ACT
prohibiting the buying and selling of bear and requiring
the executive director of fish and game to adopt
rules relative to the taking of moose.

Amend the bill by replacing all after section 2 with the following:

3 Executive Director of Fish and Game; Rulemaking Duty Added. Amend RSA 208:1-a, II to read as follows:

II. The executive director, with the consent of the commission, [may] ***shall*** also adopt rules under RSA 541-A [regulating] ***to regulate*** the issuance of licenses or permits ***and to set fees for applications, licenses or permits.***

4 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill prohibits the buying and selling of bear.

This bill also requires the executive director of fish and game to adopt rules to regulate the issuance of licenses or permits and set fees for the applications, licenses or permits relative to the taking of moose.

SENATOR WHEELER: Yes, what the amendment does is it simply changes one letter here. It makes the bill read, "an act prohibiting the buying and selling of bear", so that we don't have to pass an .08 bill. With all seriousness, the bill prohibits the selling of bear meat and the amendment gives the state department of Fish and Game the authority to set the license fees.

SENATOR COLANTUONO: What I want to know is, why is it so bad that we are going to prohibit the selling of bear meat, but we are allowing the selling of bear heads, hides and feet?

SENATOR WHEELER: I guess it would be, Senator, that the value of the bear is probably in the meat that the furs don't bring very much money and that we don't allow currently the selling of venison or any other wild game. You can give it away, but you can't sell it.

SENATOR MCLANE: I wanted to ask a question of Senator Wheeler if he could answer perhaps for Senator Barnes, if this is going to change the taste of MacDonald hamburgers?

SENATOR HOUGH (In the Chair): The Senator doesn't have to answer that.

Amendment is adopted.

Ordered to third reading.

HB 475, an act relative to special permits for the use of crossbows by physically disabled persons. Wildlife & Recreation committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: Mr. President, this bill would simply amend the current law RSA 207:10-C to provide that when an individual has lost both hands and has totally and permanently lost the use of one or both hands, he is eligible to be considered for a handicapped crossbow hunting permit. Under current law, only an individual who has lost one or both hands is eligible. We recommend it to pass.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

ANNOUNCEMENTS

SENATOR LOVEJOY (Rule #44): I want to take this opportunity to thank each and every one of you for your prayers and for the very lovely flowers. Delores said to make sure I thank the Senate for the flowers that

ers. Delores said to make sure I thank the Senate for the flowers that you sent. We appreciate them and they are very lovely. To tell you that through your prayers and ours, my wife is doing well, she is back at home. She is under medication for a heart problem. I just wanted to tell you how pleased and thankful we were for your compassion and thoughtfulness and consideration. Thank you very much.

SENATOR HOUGH (In the Chair): Before we make our motions and close this place down for the day, there have been a number of inquiries, both by the membership and members of our staff as to how the economic summit on Monday is going to take place. It is really a very simple, basic, logistic question of how things are going to move through the afternoon. Starting, I guess, where one would park their car. I have asked Senator King and his people, Jeff Barr is in the room here, that have worked on the details and there may be some questions that you may have that haven't been asked or answered yet. So after Senator King completes his remarks, if there are any questions as to what is going to happen, and I have a couple myself as close as I have been to this, so feel free to ask them.

SENATOR W. KING: Mr. President, I will try and be relatively brief. I want to start out by introducing the four people who have made this thing happen. You have seen them around working on this, but I want to make sure that you all know the kind of work that they have put into this. They should be the ones who should be getting the credit for all of the organizational stuff. We will start by introducing the head honcho, Jeff Barr, David Bellegarde, Jennifer Kent, Terri Pennock. If it weren't for the work that they put in we wouldn't be able to pull this off. This will be the briefing book that everyone who comes will receive. It is pretty comprehensive. It includes information from the Department of Employment Security. And it includes information from the Department of Economic Development (DRED). And it also includes biographic information about all of the presenters and some other information that is important. What you have in front of you here is the detailed description of the room itself. What you see in the center of the room, this room is set up like a theater in-the-round. In the center of the room will be the presenters and directly behind them at the long tables in the circles will be the Senators and the members of the House Economic Development committee and some people from the executive branches. Directly behind that you will see squares, there will be tiered tables. They will go up in tiers so that it will be as I said before, a theater in-the-round type of a set up. I think that everything else is relatively self explanatory in terms of where the cameras are and all of that. WEVO and channel 11 will simulcast this thing all day long from gavel to gavel. The registration goes from 12:00 to 1:00 o'clock. At 1:00 o'clock sharp the event will begin with Michael Porter. Parking is in the garage. You will have a validated parking ticket that you will be able to get when you check in. That is the general details. There will be at every Senators round table, name plaques so that you know that when you arrive just take a seat where you find your name.

SENATOR BARNES: Senator King, this is not a question, this is a comment. I think, well I don't think, I know, that I would like to thank you for all of your effort in setting this up. I think that it is going to be very beneficial to the people of New Hampshire and that is what it's all about. I want to commend you and give you a round of applause.

SENATOR MCLANE: I am curious how many members of the Senate are going to be able to be there? I knew that somebody was going around to get the number.

SENATOR W. KING: Most everybody will be able to be there. There are a few people who aren't going to be able to be there for the whole day. There is one person who is giving up the opportunity to listen to Robert Wright to go down and watch a Celtics, Lakers game.

SENATOR BARNES: Oh, boo-hiss, who is that?

SENATOR W. KING: I won't divulge that information.

SENATOR BARNES: The dean, it's not the dean is it?

SENATOR W. KING: No, it is not the dean.

SENATOR RUSSMAN: Somebody with young kids.

SENATOR W. KING: Are there any other questions?

SENATOR MCLANE: What time is Robert Raiche on?

SENATOR W. KING: Seven o'clock. It will be broadcast by satellite from Washington, but set up so that we will be able to ask some questions.

SENATOR MCLANE: But it will be on the television at home?

SENATOR W. KING: Yes. I would encourage you if anybody asks you about it, that you tell them that there is a call in portion in each one of the segments of the program so that individuals who aren't able to be at the Center of New Hampshire because it is by invitation only, will be able to watch this or listen to it and will be able to call in if they have a question.

SENATOR DISNARD: Will the news media in the different parts of the state be indicating in the news releases where the public may call if they so desire?

SENATOR W. KING: On the day of the event, both WEVO and Channel 11 will broadcast and show the number to call which is a 1-800 number and it is being provided by Long Distance North specifically for this event. There will be for anybody who is concerned about getting messages, there will be a message center set up over there and you will be able to hear whoever the appropriate people are and the number of the message center where you can get messages or you can have faxes sent out or messages sent out. If you need to do that they will come into the message center and we will have volunteers there that will deliver them to you on the floor of the summit itself. Anything else? I think that on the television there will be a little bit of intro before 1:00 o'clock. I think that they will probably be talking to some of the Senators who helped set up the summit. But at 1:00 o'clock they will begin broadcasting the event and go straight through with one break for All Things Considered, and then which time we will all be eating. Then we will all come back for Secretary Raiche's address and the rest of the presentations.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Thursday, April 1, 1993 at 1:00 p.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 111, an act repealing the pre-admission screening program for persons entering intermediate care or skilled nursing facilities.

HB 117, an act limiting the possessing or taking of marine mammals and prohibiting the taking of a fin fish or crustacean with mobile gear and salmon and striped bass with any netting.

HB 118, an act repealing the prohibition against fishing on a certain portion of the Winnicut River.

HB 120, an act mandating that Workers' Compensation benefits collected under New Hampshire law be the exclusive remedy for a person injured in New Hampshire.

HB 135-FN, an act exempting certain properties from the long-range planning process prior to the sale of the property by the Division of Human Services.

HB 153, an act prohibiting the buying and selling of bear.

HB 183-FN, an act relative to eligibility for parole.

HB 199-FN, an act requiring municipalities to use state police forms for license applications and licenses to carry pistols and revolvers.

HB 224-FN-LOCAL, an act relative to the organization, accountability and liability of municipal fire departments.

HB 241-FN, an act creating a committee to study the establishment of procedures for medical decision-making on behalf of patients unable to make decisions for themselves.

HB 252-FN-LOCAL, an act allowing the wetlands board to adopt rules to expedite the permitting process for minimum impact projects.

HB 255-A, an act relative to interest rates on short-term borrowing by the State Treasurer.

HB 277-LOCAL, an act extending the powers of heritage commissions to historic district commissions.

HB 293, an act relative to notice to tenants prior to the sale of a manufactured housing park.

HB 310, an act relative to the definition of "bedroom" for the purposes of determining septic system size.

HB 312, an act relative to protecting New Hampshire's heritage landmarks and establishing a review process.

HB 324, an act relative to conditional discharge of a patient under the mental health laws.

HB 405, an act relative to financing of manufactured housing.

HB 426-FN, an act establishing a separate account in the oil discharge and disposal cleanup fund to reimburse owners of bulk storage facilities for the costs associated with gasoline and diesel product spillage.

HB 428-FN-LOCAL, an act authorizing the county convention for Rockingham County to employ a delegation coordinator.

HB 460, an act allowing the court to order offenders to pay restitution to the Victims' Assistance Fund.

HB 475, an act relative to special permits for the use of crossbows by physically disabled persons.

HB 488, an act authorizing the commissioner of corrections to recommend a prisoner to the adult parole board if the prisoner has completed certain programs or treatment.

HB 489, an act authorizing the establishment of municipal trails.

HB 528, an act relative to the payment of taxes by electronic funds transfer.

HB 562, an act relative to meetings regarding security issues in correctional facilities.

HB 598-FN, an act authorizing the medical examiner to release corneas in certain cases for use in corneal transplants.

HCR 3, an act encouraging the emphasis of United States military history into the school curriculum and directing that November 1993 be designated as "Armed Forces History Month."

SENATOR DISNARD: moved that the business of the day being completed, the Senate now adjourn until Thursday, April 1, 1993 at 1:00 p.m.

Adopted.

Adjournment.

April 1, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

Today you are going to have to do that which people like me elected you to do: figure out how to shovel out the barn with everybody on all sides of the issue looking on, you are going to have to lead by making some hard choices. Keep your head up.

O Lord, two tenths of a percent has sure raised the thermostat around here more than just a couple of degrees. It must be important - to them, to us and to you. So keep an eye on them today, Lord, and give them the nerve to lead, and the unimpaired capacity to do that leading carefully.

Amen

Senator Currier led the Pledge of Allegiance.

INTRODUCTION OF GUESTS
NOTICE OF RECONSIDERATION

Senator Cohen moved reconsideration on HB 153 prohibiting the buying and selling of bear.

INTRODUCTION OF HOUSE BILLS

Senator W. King offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 172-662 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 172-FN, relative to the oil discharge and disposal cleanup fund. Environment committee.

HB 434-FN, relative to the assessment of the oil import license fee. Environment committee.

HB 645-FN, repealing a provision requiring approval by the superior court of rules adopted by the Board of Tax and Land Appeals, increasing a filing fee charged by the board; and relative to the effect of an abatement appeal on subsequent taxes. Judiciary committee.

HB 662-FN, relative to adjustments to the gross business profits under the business profits tax. Ways and Means committee.

COMMITTEE REPORTS

HB 137-FN, an act lowering the level for legal intoxication under the DWI laws from .10 to .08. Transportation committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: I rise to offer the committee report of ought to pass on SB 137-FN. This bill as we all know, lowers the blood alcohol level to .08 for per se evidence in the state of New Hampshire. The question is why do we want to do this and why it is right for our state? Having worked on the Henniker Rescue Squad for many years and being involved in the medical and emergency issues, both in my political and business life, to me, the prevention of loss of life and of limb is paramount. I know driving while impaired is one of the most dangerous things that anyone could do. We have heard testimony that a person is substantially impaired when he or she reaches blood alcohol concentration of .08 percent. That testimony is based on scientific facts. One is an ability to negotiate to curves, reaction time, and the ability to identify objects of significantly effective. The chance of crashing is multiplied greatly at .08 blood alcohol level. Opponents will argue that our current laws aren't being enforced well enough. I believe that to be a separate issue. For me, the issue is here as scientific evidence. Personal experience on the part of numerous legislators who have taken the test and statistic evidence that points to the fact that significant reduced ability to operate a motor vehicle occurs at the .08 blood alcohol level. If we recognize this yet to be true then we must pass legislation that recognizes it as well. An impaired driver behind the wheel is no better than a madman with an automatic weapon. The potential for death is the same, the inability to control actions is the same. In many instances, the result is the same. If a motorist drives at .08, shame on him, and if we condone it, shame on us. If we do not pass this legislation we will in fact be condoning impaired driving. On behalf of all of the victims that I have pulled out of wreckages of alcohol related crashes, alive and dead, I urge you my fellow Senators to vote yes and accept the committee's recommendation of ought to pass.

SENATOR BALDIZAR: I rise to offer a floor amendment.

Recess.

Out of recess.

SENATOR BALDIZAR: I withdraw my motion at this time.

SENATOR HOUGH (In the Chair): The Chair was in error and would recognize those members who have indicated that they wish to speak.

SENATOR BLAISDELL: Mr. President and members of the Senate, I rise in opposition to the committee report as delivered by Senator Currier. I do this and it is a hard thing for me to do, but I rise in opposition to it. My first question to this Senate is when are we going to stop legislating stupidity? I have been here 22 years and I don't know that you can do that. I don't know how we can legislate stupidity. I served on Governor Hugh Gallen's DWI Task Force a few years ago. I served with such distinguished people as Judge Whitey Fraser from over on the coast, I am sure that most of the people know him from over there. It is a tough subject for all of us and I respect each and every one of you and your views, I want you all to know that. And to those of you who are going to vote against changing this to .08, I respect you tremendously because it is a hard thing. Some of us have taken the hard knocks from some of the press in this state. I got it because I didn't go take the .08 test and there was a reason for that. Number one, I don't drink for one thing, and the second thing is that I am a diabetic. That would have hurt me if I would have taken that test. So there were some reasons and I think that maybe the press ought to take a look at that and see that there were some reasons that some of us didn't take it. You know a few years ago I went down to the Red Sox ball game when Carl Yastrzemski retired. It was a great day and he was speaking and a lot of people were around us. And as I looked up in the air there was a plane flying overhead and a long streamer was on the back, and it said, "we will miss you Yaz", your New Hampshire liquor stores. A great image for this great state that we are trying to keep the way that it is for these young people that are sitting right here. I have had many friends that have lost their dear ones, most of it was by the way 1.4, 1.7, not .08 maybe not even .1. It is not the answer to lower this, it is not the answer. The answer is education to children what booze can do to people. Treatment, and I emphasize this and call if a conflict of interest if you would because you know where I work. Treatment for those who need the help and don't get it. Yes, we do, Senator Currier, we need more law enforcement that is there, but not enough. And I dare that Chief Monier would tell you that he has enough to be able to do this. I guess what I am saying to you is that when are we going to put something onto legislation that is going to take care of the people that we hook on the booze in this state. We have them on every interstate that we have, we have them just about every place. Why? Because we tell the Liquor Commission to maximize their revenue. We tell them, this legislature, so that we can send back $54 million to revenue sharing to the cities and towns. We can do just about everything else that we do in Health and Human Services. You can say, well Senator, you were a part of that, you put them there. Yes, I did. Senator Al Rock, God rest his soul and I put them on the interstate going towards Manchester, we did, yes. But that was the only ball game that I have and that is the only ball game that I have today, that I have to sit here in this Senate and maximize revenues that I don't truthfully believe in. I don't believe in them. But it is the only ball game that I have to educate the children of this state. You don't want me to get into the broad base tax end of it because I know that you get disgusted with that, but there is an answer if people want to look at it. I said that we tell the Liquor Commissioner to maximize all of the revenues that we can get to encourage people to drink. The newspapers who are in favor of lowering it to .08, you turn the page and they have got 15 pages of liquor being advertised by the Martinally Group out of Massachusetts. So what I am saying to you is that bring me a bill that says that you are going to help some people that we hook

on the booze in this state. Do something about that, give the troopers in this state . . . don't give them one or two in the bill, in the budget process, give them some help, set up a force to be able to do that and to help them. I am going to close with just a letter from a drug and alcohol abuse counselor that was sent to me, "I feel that .10 is plenty low enough for all safety considerations. Any lower will simply put law abiding citizens in jail and at odds with the legal system". He weighs about 160 lbs and this weight, the DWI set at .08 probably would be legally drunk after about one drink for about half an hour. Can you honestly say that you would like to have a person that works everyday, have one drink at a friends and drive home and be arrested and booked and license suspended, suffer the stigmatism of DWI, be fined, have his insurance rates go through the roof and pay for cab fare for 90 days or longer, appear in court, hire lawyers and explain this all to his family and friends, his co-workers, and his boss. He said to me that, "when I woke up this morning, I thought that I was a pretty good guy, but according to this proposed law, I am a hardened criminal after one drink." As I said, I have to agonize over this one because I used to say in this chamber, "come walk with me through the state hospital, come walk with me through the Laconia state school", and thank God over the years we have done some things about that, we have been able to do some good things. But now I ask you, you people, no matter which way this bill goes, after it is all over, to come walk with me through some of the hospitals that we put these poor unfortunate people in that got hooked on the booze that we so graciously take that revenue, always that revenue, that is what it is, the hell with those who get hooked on it. So that is why I oppose it. I hope that this Senate opposes it and I hope that someone will come in with some kind of legislation that will give some help to those very unfortunate people who are sick because we put the big ads in the paper and fly the airplanes over the ball games and telling them how great we are. Thank you very much.

SENATOR BARNES: I, too, as Senator Blaisdell, have no problems with people disagreeing with me and being on the other side of the fence. Senator Blaisdell, I say that I certainly would be proud next session, to sit down with you and put some legislation together to address some of those concerns that you brought up. This in my opinion, is a bill that will benefit all of our citizens and those others who drive on our highways. I would like to talk directly to some of the concerns that I have heard regarding this bill. Things that I have heard on television, I have read in the newspapers and in the hallways. Number one, what I have heard, perhaps not in this order; "it will put a deep hurt on our tourism industry". Our New Hampshire Hospitality Association has taken this stand. Over the years they have done a great job for our industry, but on this issue, pardon the pun, I think that they are out to lunch. The state of Maine went to .08 in August of 1988 and I would like to read some figures for you: liquor sales in the state of Maine, and I am going to go with the taxable restaurant sales; in 1988 the taxable restaurant sales in the state of Maine before .08-$705 million. In 1989 it went up to $732 million. In 1990 it jumped up to $753 million. In 1991 it went up to $769 million and in 1992 it went up over $8 million. Lodging sales because lodging is also affected by this, that is what we hear from the hospitality industry and they are correct. I am going to give you the same run down on the Maine numbers from 1988 to 1992. Lodging sales in the state of Maine in 1988 were $207 million. In 1989 they were $223 million. In 1990 $232 million. In 1991 $258 million and in 1992 $262 million. These numbers don't show me that .08 will kill and stifle our tourist industry. Number

two, an expert from the University of New Hampshire, Professor Moore, gave testimony during the public hearing. What I have in my hand is a copy of a letter sent to Joel Maola, Chief of Staff of the Judd Gregg administration. It was sent by Dale Nitchske, President of the University of New Hampshire, I think that we all know who he is. In this letter to Joel he mentions the fact that the American Beverage Institute provided a contract over $23 million for a study for the University and through Professor Moore's leadership to come up with a study on drinking. Professor Moore is a well respected person, I have no problem with that; however, the experts that I have listened to and I hope that you all have listened too are our police officers and our EMT folks, who are paid by us, the citizens of the towns and the cities in this state and not by a lobbyist group on the outside, we pay the bill of those experts. To me, that means a lot more than a report from Professor Moore from the University of New Hampshire. I would like to read a letter from one of the police chiefs in my district. I received several, but this pretty well sums it up, "Dear Sir", he knows me as Jack, I don't know why he put sir on there, "as a career law enforcement officer with 24 years of full time experience, I am writing this letter to show my support for lowering the blood alcohol level to .08. I have participated in a controlled drinking study where I tested a number of individuals that were allowed to drink until they reached the level of .1, the change in their personalities," now please remember what I am saying because this is going to be followed up by something else that ties into this, "change in their personalities, coordinations and motor skills were remarkable. The vast majority of the drinkers that said that they would be all right to drive should not be behind the wheel of a vehicle at levels higher than .08. We all know that alcohol is a major factor in a large percentage of our serious automobile accidents. It is time for the state of New Hampshire to stop the blood shed on our highways and take a positive step in the apprehension of alcohol impaired drivers. The new administration license suspension law and a change to a BAC level of .08 will make great strides in making our highways safer". Now this is from the Chief of Police, Neil Gendron who is the Chief of Police in the town of Fremont. In support of Chief Gendron's letter, I would like to read aloud to you my report card after taking the DWI test three weeks ago: On Friday, March 12, 1993 Senator Barnes participated in a DWI driving test. Senator Barnes drove in the driving course five times prior to drinking and taking an average of 1 minute and 21.3 seconds to complete the course. His BAC level was zero prior to drinking. At 11:12, Senator Barnes drank two 16 ounce Schlitz and finished his first drink at 11:19. His BAC test result was .009, he appeared happy, "that's good", took 1 minute and 34.53 seconds to finish the course. He hit four cones and got lost on the course once. At 12:20, Senator Barnes finished drinking two more 16 ounce Schlitz and his BAC test result was .034, he completed the course in one minute 56.38 seconds, hit two cones, appeared aggressive, became lost on the course. At 1:35, Senator Barnes drank two more 10 ounce Schlitz and tested at .046. "Now we have had six 16 ounce Schlitz, okay". He took one minute and 46 seconds, to complete the course, "I sped up a little after that", hit seven cones, was disorientated, got lost on the course and missed backing into the garage twice. Indication of a loss of depth perception. Last paragraph, Senator Barnes then had two more 16 ounce beers for a total of eight. He tested .07, he became very talkative and did not complete the course. He kept stopping to talk to the instructor and anyone else he could find. Now unfortunately, my wife and daughter saw this last night, they read it and they said that I didn't

have to have eight Schlitz to go along with that last paragraph, they said that I do that without drinking. Number three, insurance rates will sky rocket. Well I have here in front of me, a report showing the difference of three insurance companies who insure a restaurant, in Portsmouth New Hampshire, and another one in Ogunquit, Maine. The total gross receipts of these resturants are $1 million. The liquor receipts $300,000 and the liquor liability limit was $500,000. Yesterday in Portsmouth, one company quoted them $634 per thousand for a total of $1,902. Company B $1668 or $2,004 premium and company C quoted them $2,064. Now at the same time, the same year frame, this past year with a follow up on Ogunquit, Maine, guess what and he is at .08? Theirs were $1,902 same as the fellow up in New Hampshire. Second company, $2,004 the same exact price and then $2,064 the same, so the folks in Maine are paying the same and the fellows in New Hampshire are paying the same as the state of Maine with .08. Perhaps with .08 the insurance rates in New Hampshire would drop. Number four, liquor and beer sales will drop off of the table and that would be terrible for those who might think that. I just happen to have some notes on that from, here again, the state of Maine who has the .08 and have it in for four or five years. The net income on all liquor stores in the state of Maine, in 1988 were $22 million. In 1989 the first full year of .08 it went up to $25.5 million. Then in 1990 it came down to $23.2 million and then in 1991 it went back up a million to $24.3 million. In conclusion, this is a very important step in cutting down on our DWI problem. My and our experts tell me that it will save lives and limbs. Please join with me and vote in favor of HB 137. It is very important to our constituents and the people who drive on our highways. Thank you.

SENATOR SHAHEEN: Senator Barnes, you mentioned Professor David Moore who happens to be a constituent and also a friend of mine and I just want to get a clarification because it sounded a little bit like you were impuning the honesty of his research findings and what he had to say when he testified. And because I know that he is a nationally known pollster and researcher whose judgement I have a lot of respect for. I just want to get a clarification that when he says that he studied California's .08 law and as the results of his research, he sees that it has not made any difference in lowering their accident and death rate compared to a state like New Hampshire. You are not suggesting that he came to that conclusion because that study was funded by the beverage institute are you?

SENATOR BARNES: I certainly would not do that. I thought that I said that he was a well respected individual, just mentioning the fact that the study was paid for by that group. There were no other implications. I am sure that the man is the highest caliber.

SENATOR SHAHEEN: I do understand that he acknowledged when he gave his testimony before the House committee that that study was paid for by the beverage institute, so there was never any question about that, is that correct?

SENATOR BARNES: I am sure that there is no question. But some of us weren't fortunate enough to sit there at the hearing, and those who weren't there at the hearing, I wanted to make sure that they knew who paid for it.

SENATOR HOLLINGWORTH: Senator Barnes, I found your story about your driving test entertaining, but wouldn't you say that you perhaps were impaired at a lower level than your .08?

SENATOR BARNES: By reading this report, I believe, it was around .046.

SENATOR HOLLINGWORTH: Thank you.

SENATOR PIGNATELLI: I, too, found your report interesting. It doesn't . . . and it is very thorough, but it does not mention, however, how many times that you needed to visit the bathroom during your eight Schlitz.

SENATOR BARNES: I am glad that you brought that up, Senator. I believe that it was about four trips down the hall and as you travel down the hall, there was a police officer escorting you so that you wouldn't get lost or fall down. Furthermore, I was in the bathroom one time with a colleague from the House, a friend of mine, a constituent, and the two of us were so silly that we looked up and saw a window, and we said, "let's try to get out that window and leave the guard outside the door".

SENATOR COHEN: I sit on the Senate Transportation committee and we heard the testimony. I went in there determined to keep an open mind on this very important issue, because New Hampshire cannot tolerate impaired driving to the use of any chemicals, be it alcohol or whatever. Our only option is to identify and use the best, most effective tools to get the drunk impaired driver off of the New Hampshire roads. I became convinced that .08 is not the right tool for the job. Many experts including the founder of Mothers Against Drunk Driving agree that .08 is not necessary or effective. What we need is laws aimed at the right target, not at the general public which sincerely wants to comply. And quite frankly, doesn't understand what the limit of .08 means in terms of drinks that they can consume. We need to educate first on the laws that we have before we make new laws. When people understand the dangers of drinking and driving, most nonproblem drinkers will not be a real threat to public safety. Responsible people control their own behavior. But .08 will not have any effect on drivers, drinkers, who are out of control. This bill has the image of being tough, but the reality is that it isn't tough at all on the target population. I would like to cite only the people who spoke in favor of the .08 in the Senate Transportation committee. One officer who spoke for it that works with young people in Manchester favoring .08 said in his experience, "education works better than enforcement. .08 advocates pointed out that many of the problems are under 21 drinkers and drivers with a blood alcohol content at over .15. This is the real problem. These people don't care if it is .10 or .08. Many experts favor an acceptable blood alcohol content level for under 21 drivers at .00 and this is where it should be for under 21. We need strict enforcement and education here. One of the pieces of information that was handed out by the .08 advocates was this little glass of beer. On the back of this, this is from the .08 advocates, it says, "the average blood alcohol content of arrested drunk drivers in Maine is .16. The average BAC of alcohol involved fatality in drunk drivers is .18. In New Hampshire, the typical drunk driver has an average BAC of .17. Chronic drinkers will be unaffected by the .08 legislation. The heart of the problem is the teenager, the repeat offender and the poly user, the user of more than one chemical. The Department of Safety spokesperson also speaking for .08 suggested that we have no choice but to surrender to this problem, he said, "we are never going to do anything about the problem drinker, driver, the repeat offender". Well, I say that if we want to be serious about making our roads safe from the threat of drunk drivers, we cannot accept defeat in this. The real fight, we need education, intervention and rehabilitation and stronger laws dealing with the poly user. According to studies previously cited, .08 is the

least effective deterrent. Administrative license revocation is the most effective strategy at reducing drunk driving. In California, when it was lowered to .08, the death rates for drivers above .15 increased. The founder of the Mothers Against Drunk Driving does not favor .08. If I may quote, this is from Candy Lightner, "my grief and anger made me determined to do everything in my power to stop this senseless slaughter caused by impaired drivers. Though I am deeply committed to that goal, I worry that the movement I helped create has lost its direction. Our biggest obstacle was society's tolerance of drinking and driving, so we passed more than 1,000 laws and attitudes changed. Society no longer considers impaired driving sociably acceptable. We are still nowhere near the point of eliminating this horrible tragedy from our streets and highways. While no one can deny the safest BAC is no BAC, this is also unrealistic, given our limited resources and energies. What it realistic is attacking the problem drinker, the chronic drunken driver, the most dangerous threat to our safety. In our rush to do the right thing, let us not lose sight of the facts: half of the drinking drivers involved in fatal crashes have a BAC of .17. Most drivers with the level this high are problem drinkers and repeat offenders. Young people ages 16 to 24 are the majority of deaths involved drinkers with a BAC of at least .15. Lowering the BAC won't make a difference to these offenders". She concludes by saying, "rather than putting all of our limited resources into laws that fail to address the real problem, we need better enforcement of existing laws and proven policies that have demonstrated a significant impact such as swift and sure license suspension, sobriety check points and designated driver programs. Putting our trust in new laws and regulations that attack only the tip of the iceberg will not make our highways safer". We should also recognize the people involved in the sales of alcoholic beverage must have adequate training. That isn't done right now. Another proponent of .08 who spoke to the committee, the spokesperson for the Attorney General's Office said, ".08 would not be enough", he preferred .05. In fact, everyone that I can recall who spoke for .08 said that they wouldn't stop at .08. We don't need to play some endless numbers of roulette. We need education and laws that work and are enforced. We have new laws on the books, administrative revocation, open container laws. Courts are now required to note the number of prior DWI convictions prior to sentencing. We need to allow these tough, very new measures to work. And the Highway Safety Agency, New Hampshire's Highway Safety Agency passed out this information to the committee; on this it points out, "impaired driving doesn't start at .10 BAC". You can be convicted of driving while intoxicated with the BAC as low as .05. This law is on the books now. People are smartening up, the number of DWI arrest and fatalities are down sharply. We need better enforcement and education, and to teenagers, and more support for rehabilitation. These are the real deterrents. We have responsibility to use the best, most effective tools. What we don't need are simple, politically popular solutions which serve merely to allow us to say that we did something, even if that something is ineffective as was pointed out by Senator Barnes. Impairment varies a great deal according to how quickly they drank the beverage, how much they weigh. The level of intake affects that greatly. For example, I had that one beer, I was hungry and tired and it affected me. If I had been in some other state it wouldn't have affected me at all, I wouldn't have felt anything, it varies a great deal.

SENATOR COLANTUONO: Well assuming it to be true, that virtually everybody is impaired at .08, don't you believe that it would be proper and responsible for us as legislators who set the laws, to set the limit that

conforms to what the modern testing data shows in order to avoid the charge against us that we are condoning people driving who are actually impaired?

SENATOR COHEN: The point is that people can be prosecuted at .05 right now. We don't need to have this law on the books. If people are impaired and are stopped for . . . they can be convicted of driving while they are intoxicated with a blood alcohol content down to .05 right now.

Committee report of ought to pass is adopted.

SENATOR BALDIZAR: It is important that you all keep the floor amendment in front of you and it should be a copy that has the bottom portion highlighted in green. I want to say first of all, that this amendment did not come from the Hospitality Association or from any other lobbying group. It is not motivated by politics. I am offering it on behalf of myself and Senator Russman. I have a deep concern for alcohol related issues, as I believe that we all do. I honestly believe that we are deadlocked on the issue and I believe that this is too important an issue to leave in that deadlocked pattern. This is an honest effort to make good public policy, one that makes a difference and one that we can all be proud of. I want to first read to you the definition of prima facie evidence, "at first view, on its face, not requiring further support to establish existence, validity, creditability, etc". What this amendment does is that it changes the weight of evidence based on the levels of impairment. I think that that is what we have to do if you want to nail drunk drivers. I want you to look at this in a whole new light because we have been taught and we have been listening to numbers. We can't change the problem until we change the focus. We started out at .15 years ago, then we went to .10 and now we are faced with .08. If people are wearing buttons that say .08 kills, why would we make a law that allows us to do that? We agree. I think that we all agree, that people have not been held accountable. We agree that society has suffered many tragedies. The real issue is impairment. Everybody's level of impairment is different. The amendment that I am offering changes the weight of the evidence based on impairment. If you look at the highlighted amendment, the section that is highlighted, you will notice that it is based on a level of .03 up to .10. If you read the sentence before the sentence that is highlighted, it says, "evidence that there was at the time alleged, an alcohol concentration of .03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor". The next sentence says, "evidence that the defendant was driving or attempting to drive a vehicle upon a way with any level of alcohol concentration above .03 which caused an accident which resulted in serious bodily injury as defined in RSA 625:11, or death, is prima facie evidence". Before we were saying that it wasn't prima facie evidence. I am saying, let's change that. We have looked at the law in terms of numbers. I am going back to the beginning of it, we have used .03 as a bench mark. I am saying go back to that and use that. If you are at .04 or at .05 and you caused an accident, you must have been impaired. Under this solution there is accountability. We will no longer have law enforcement helplessly telling people that there is nothing that they can do; if this becomes law, they can make a conviction stick. I have spent a considerable amount of time trying to come up with a logical solution. I know that it appeared to be a deadlock in the Senate which meant that we didn't have the right answer, because we would have agreed on something if it was right. I apologize that I haven't been able to talk to all of you personally, but I did talk to law enforcement, public health and the

people who administer our treatment program. I also spoke to the Attorney General and I also spoke to the Governor today. Consensus was that this was logical. A question was raised that the scientific community might hesitate to embrace this. I spoke to an official in the Department of Public Health. The bottom line is that it can be done. The blood alcohol test is accurate down to .0. The breath test can also be done. They would have to change something within the department as to how they would determine how they read the numbers, but they said that they can do it. They assured me that what I want to do can be done and the testing is there to do it. The point of this amendment is to say that we have no tolerance for the driver who is impaired. We want the people of our state to focus in on the impairment issue. We want people to worry whether they are impaired not whether they are at the legal limit. Sometimes the simple solution is overlooked because it is so simple.

We need to take the lottery out of it and put logic back into it. We have an opportunity here to serve the people who elected us, not to let this issue be killed in the Senate that is deadlocked. We can say that we did more than .08, we made a responsible decision to do the right thing. I was listening to some of the comments by the previous speakers. Senator Currier said in his experience that he has seen people impaired at .08. Senator Blaisdell said, "give us a bill that helps law enforcement", this is it. Senator Barnes said, "he was impaired at .046". He would be able to drink eight more Schlitz before he got up to the legal limit of .08 and we already know that at .046 he couldn't operate his vehicle. This is the right solution and I hope that you will all really think very hard about supporting this. I really believe that it is the right way to go.

Senator Baldizar offered a floor amendment.

2137B

Floor Amendment to HB 137-FN

Amend the title of the bill by replacing it with the following:

AN ACT

relative to the consideration as evidence of a defendant's blood alcohol concentration when operating a motor vehicle.

Amend the bill by replacing all after the enacting clause with the following:

1 What Constitutes Evidence of Legal Intoxication. Amend RSA 265:89 to read as follows:

265:89 Evidence. Upon complaint, information, indictment or trial of any person charged with the violation of RSA 265:82 or 265:82-a, the court may admit evidence of the defendant's alcohol concentration, as shown by a test of his breath, blood, or urine as provided in RSA 265:84. Evidence that there was, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor. ***Evidence that the defendant was driving or attempting to drive a vehicle upon a way with any level of alcohol concentration above 0.03, which caused an accident which resulted in serious bodily injury as defined in RSA 625:11 or death is prima facie evidence that the defendant was under the influence of intoxicating liquor.*** Evidence that there was, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.10 is relevant evidence but is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating

liquor; but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. Evidence that there was, at the time alleged, an alcohol concentration of 0.10 or more is prima facie evidence that the defendant was under the influence of intoxicating liquor. In addition, evidence that there was, at the time alleged, an alcohol concentration of 0.10 or more shall, in conjunction with the evidence otherwise required by RSA 265:82, I(b) of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265:82, I(b); and evidence that there was, at the time alleged, an alcohol concentration of 0.10 or more shall, in conjunction with the evidence otherwise required by RSA 265:82-a, II of driving or attempting to drive a vehicle upon a way and of one or more of the circumstances specified in RSA 265:82-a, II (a), (b) and (c), constitute a separate offense under RSA 265:82-a, II; and evidence that there was, at the time alleged, an alcohol concentration of 0.20 or more shall, in conjunction with the evidence otherwise required by RSA 265:82-a, III of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265:82-a, III.

2 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill provides that evidence that the defendant was driving or attempting to drive a vehicle with any level of blood alcohol concentration above 0.03 which caused an accident resulting in serious injury or death is prima facie evidence of being under the influence of intoxicating liquor.

SENATOR CURRIER: The more I hear arguments for and against the bill, the more uptight I am getting regarding what is really the enforcement issue here in terms of the .08. This is going to be a long question so bear with me because my dander is up now. I almost asked the question of Senator Cohen because as he was saying things . . . what we are talking about here is lowering for scientific reasons the level of impairment, we are not doing anything else and it has nothing to do with enforcement. We are saying that scientifically can be proven. It was in the hearing, I don't know the doctor's name, but he is our state pathologist and he came in and had all of the evidence there that proved to us that impairment was at .08. If it's really the issue, enforcement here, I mean one of the things that always makes me livid, I get livid when I hear it, fourth time first offense. How could you be fourth time first offense? First offense is once. But we have people here in the state of New Hampshire that are getting convicted for fourth time first offense. Would you, the question is, would you next session in the legislature, co-sponsor a bill with me to prevent that from happening in the state of New Hampshire?

SENATOR BALDIZAR: Absolutely. I will go down with you and draft it now.

SENATOR CURRIER: Thank you, Senator.

SENATOR BALDIZAR: I also would like to say that earlier we were able to laugh and we had a few jokes about this and I think . . . I am really glad that we were able to do it, because this is a serious issue and I think that we have all . . . Senator Currier, when you got up and talked and said that you were really uptight about it, I think that we all are and I am glad that we had a chance to laugh at it for a second.

SENATOR WHEELER: Senator Baldizar, I see in your bill here that you use .03 concentration when an accident has already happened and someone has already died, how does that help enforcement to keep the person off of the road before an accident happens?

SENATOR BALDIZAR: If you look at the top of page two, the only thing that I am changing in law is what is highlighted. If you look at the top of page two, it is already covered with . . . if someone hasn't caused an accident, but there is reason to believe that they are driving recklessly, it would fall under another part of the law that is already current law. If you would look at the top of page two.

SENATOR WHEELER: In other words, when we are dealing with the driver before there is an accident, it still remains at .10?

SENATOR BALDIZAR: Yes, that is correct.

SENATOR WHEELER: Thank you.

SENATOR BALDIZAR: But what it says is if you are impaired at any level and you get into a car, you are at risk for causing an accident and you are at risk for being convicted in this state.

SENATOR PODLES: Senator Baldizar, Senator Wheeler questioned you partly, but I want to go . . . the way that I understand your amendment, it only kicks in when you hurt somebody or when there is an accident, am I correct?

SENATOR BALDIZAR: Senator, I guess that I would answer you the same way that I answered Senator Wheeler. You would be covered under other statutes if police had reasons to suspect that you were driving recklessly under the reckless driving statute or . . . that is covered at the top of page two. That is already current law, this will not affect, will not change any other reason that the police would have relevant evidence to stop you. This doesn't affect that. It doesn't change it. That is still law and that is why I have covered it. That is why I have included it in this packet so that you could see that we are not changing that.

SENATOR PODLES: Senator, all I want to know is that your amendment, this thing that you highlighted, only kicks in when you hurt somebody or when there is an accident, just give me your yes or no answer?

SENATOR BALDIZAR: Yes, it gives the level of impairment down to anything from .03 up to .10. Because .046 is too much for some people and .08 is far too much for some people. I have brought it down to .03 if you have been involved in an accident.

SENATOR BLAISDELL: Senator Baldizar, we have heard two or three Senators mention enforcement, law enforcement. Somehow they seem to play that down a little bit. Would you believe me if I told you that on some evenings in this state of New Hampshire that there is only one trooper, for instance, on route 89 and they meet the other one up at the other end of the state, back and fourth? Would you agree with me that if we had more enforcement on those interstates or on any of our roads in this state, would you agree with me that that would be an answer to keep those people off of the roads or get them off of the roads before that accident happens and somebody dies?

SENATOR BALDIZAR: I would agree with that and I am sure almost everybody would. I would also agree that we need more education and we need to get people into treatment programs earlier. I have always been an advocate of that.

SENATOR COLANTUONO: I want to focus in on the language, "causing an accident or caused an accident". Does this mean that before this law kicks in that the accident has to be 100 percent the cause of the driver that you want to charge, one percent the cause, 51 percent the cause or if it is a multiple car accident, 1/3 or 1/4 if there are three or four cars involved? How exactly is the law enforcement supposed to determine whether the defendant caused an accident or not?

SENATOR BALDIZAR: Senator Colantuono, I am not an attorney and I think that you are trying to make this more difficult than it is. It is very clear that law enforcement would certainly have all of the other statutes available to them. If you are involved in an accident and you have been drinking, they will get you on this.

SENATOR COLANTUONO: By that last comment, should I take it then, that what you really are saying is, that if you are in an accident, no matter who caused it, you are liable?

SENATOR BALDIZAR: No. I think it says that if you are driving or attempting to drive a vehicle which caused, do you see that?

SENATOR COLANTUONO: Yes. The way that this is written, I think that you could perceive a situation where you would have two totally identical accidents that happen the same exact way, a single car accident where a person goes off the road and hits a tree. In the first accident, the driver could be .04 and the passenger, because there is no restraint or air bag, goes through the windshield and suffers serious bodily injury; in the second accident, the driver could be .09, but because there is an air bag and seatbelt, the passenger was not injured, so there was no injuries, so this law does not kick in. Do you think that it is fair that the first driver at .04 can be prosecuted under this and lose his license and pay a fine, but the second driver won't be, just because he was lucky enough to have a passenger who was not injured?

SENATOR BALDIZAR: Senator, I would answer that again by saying that I am not an attorney and we are not a jury. I think that that would all be evidence that would be used in a court. I think that it all deals with relevant evidence. The air bags and the seatbelt restraints and the whatever, I think, are all additional parts of evidence that are already covered in other areas of the law. And again, I can only tell you that this is proof that I wrote this because I tried to find language that was consistent with the law, but I don't have a legal background and perhaps this is not as technical as you would like to see it, but I do believe that this is good language and I do believe that a judge and a jury would determine who was at fault and who should be charged in those instances.

Recess.

Out of recess.

SENATOR J. KING: Senator Colantuono, is it possible at the present time to be found guilty of driving under the influence or intoxicated or whatever you want to list it under, below .10?

SENATOR COLANTUONO: It is possible, but it is unlikely. And it doesn't happen very often, in my experience.

SENATOR J. KING: But it is possible?

SENATOR COLANTUONO: Yes.

SENATOR J. KING: Would you agree with me that the amendment makes it so that it is serious that .03 and above become prima facie evidence when there is an injury to somebody or a death involved? Does that make the bill stronger than it is at the present time?

SENATOR COLANTUONO: It makes the bill weaker, because it takes out the .08. It makes the present law slightly stronger, but in my opinion, it destroys the bill.

SENATOR J. KING: Well let me ask you this way, do you think that her amendment is giving law enforcement a stronger hand than they have under the present law?

SENATOR COLANTUONO: My opinion of this amendment is that there is so many flaws in it in the way that it could be interpreted that it probably wouldn't stand up in court.

SENATOR SHAHEEN: Senator Baldizar, you pointed out in your testimony that you talked to the Attorney General's Office about this amendment. Can you tell us if he thought this amendment was enforceable?

SENATOR BALDIZAR: I don't want to speak for the Attorney General because I know that I caught him off guard when I came to him. He did not sit down and do a lot of research. This was something that I came to him with a couple of hours ago, so I am sure that he would like to have a day to go through it and look at it. He told me that he, "thought that it was very logical and was constitutional, probably. And that it was tougher than the current bill".

SENATOR SHAHEEN: Can you just clarify for us, just who within the Attorney General's Office you spoke with?

SENATOR BALDIZAR: I was speaking with Jeff Howard.

SENATOR SHAHEEN: The Attorney General?

SENATOR BALDIZAR: The Attorney General.

SENATOR SHAHEEN: Thank you.

SENATOR BALDIZAR: I don't think . . . as I said, it was a fluke. I actually went in to see the Governor and the Attorney General happened to be in the Governor's Office. I don't think that he anticipated my question, so I know that I caught him off guard and he was speaking freely. He was not speaking, I don't believe, professionally as the Attorney General, and I feel that I should make that clear.

SENATOR HOLLINGWORTH: I would rise in support of Senator Baldizar's amendment. And the reason that I rise in support of that is because for many years I have been saying the exact same thing that she has been saying. What we are looking for is impairment. As many of you know and I understand it was going to be raised that I had priorly owned a liquor license establishment, a full service restaurant, and seven years ago I sold that establishment. But I had many years in the liquor industry and I knew what happened. People would come in and they would drink, drink for drink, with the people that they were at the table with or they would attempt to. Many times you would have a woman who was small or small of weight and certainly could not keep up with the guy that she was with who was 250 pounds or that they would have nothing to eat. My bartender had a real task because it is not three drinks or two drinks or one drink, it is impairment. What we are trying to say with this piece of legislation and what we need to do for education is to say to people, I don't think I am at .08 yet or am I at .10 yet? No, am I impaired? That is what we need. We need to say, am I going to feel this drink if I drink it? That is the question. Several years ago I had a brother-in-law who called his wife one morning and said, "honey, I am going to be home from my business trip in a few hours. I am just going to make one more call and I will be home". He got in the car, three of his other partners got into the car and they went over the hill, this was at ten o'clock in the morning, less than an hour later. Maybe ten minutes later, my sister-in-law received a phone call from the police that all four had been killed.

Head-on and decapitated in a car accident by a driver. We didn't care what he blew for an alcohol level. All that we cared about is that he was impaired and he shouldn't have been on the road. That is the thing that we need to educate people about. We have done that. In the 13 years that I have been here, I have passed every single year, DWI legislation. We have attempted to educate the people. We have changed the way that people think about alcohol. Any of you that went out socially, recently, realize that people are no longer, people who have control over their intelligence realize that it is the chronic or the problem drinker who is still drinking. What we are saying to them in this piece of legislation is that if you drink, and if you drink at all while impaired, you are going to be held responsible. It is tough, it is really tough. It means that if you get into the car and you have a couple of drinks and you back into somebody, just back into somebody and he says, 'I got whiplash', that is going to be evidence that you were impaired, that is real serious stuff, folks. It is going to make money for the lawyers, it is going to make money and cause the insurance companies to be on top of anybody and put some serious thought into what is happening. But this is a serious offense folks, but isn't that what we want? Don't we want people not to think about, am I .08 as Senator Barnes said, at .046 he was impaired, he shouldn't have been driving. I hope that because a lot of us have said, "I am going to support this way or I am going to support that way", that they are not going to be clouded by the decision to vote up or down on this thing and not be willing to listen to what I think is a very tough amendment. I think that last year I went to a seminar in Boston and it was very interesting because it was a whole New England region. The study came from all the states and what it said was, "that what legislators do is they . . . they used the example of cocaine. Years ago cocaine was legal you could go and buy cocaine and people were professing how wonderful it was, it made you think clearer and it you could do all kinds of things and then people began to get educated that cocaine was bad and that you couldn't do things. At that same point when the cocaine use went down, people became aware of how bad it was and how it didn't have all of these magical powers. The very same time the legislature went into effect and made it illegal to have cocaine. They also put years and years and years of tough legislation on the cocaine. And what they said after they did that, after the use had started to go down, they said, "sh, don't tell anybody. Don't talk about the bad effects of cocaine, keep it secret, because if you tell them, people will use it". That is exactly what we have been doing in this legislature for years. In last year, in 1990 the use of alcohol was going down. In fact, it went down 25 percent fatal injuries, except in Maine. They went to the .08 and guess what? Maine's fatal accidents went up. I guess you could attribute to the increase to the people going to their state and staying at their lodges and their lounges. But alcohol fatalities went up in Maine at the same time that last year and the same time you could blame that it was on the population. I don't know. But in Maine, they went up. The thing that I am trying to say to you is let's educate our people. Let's take care of those that are chronic and problem drinkers and let's put the blame where it belongs and make people think about 'am I impaired' and that is what I would ask you to support.

SENATOR MACDONALD: Senator Hollingworth, this is a 'would you believe' since you were in the business. Take, for example, a person has an accident and kills somebody and the blood level is .03, alright? According to the law, you are under according to the law, now you as an owner of as a business served that person. Up to this point, you have been cov-

ered by RSA 507-F. Now the law is going to say that that person at .03 who you served was intoxicated, you have lost your blanket of security under 507-F haven't you?

SENATOR HOLLINGWORTH: No. I don't think so, because what it says is that as a responsible server you have to make sure that the person is not impaired.

SENATOR RUSSMAN: I wasn't planning to rise but there have been some things said that I don't think that are entirely accurate. As a lawyer, I happened to practice in this area of DWI law, so I have some sense of what some of the things are and what Senator Currier raised. How can you possibly have four time first offenses and you shouldn't? That is the reality of it. But the practical matter is just like here, there are sometimes compromises on legislation in the court room and the police departments know this all too well. If it turns out that they don't have a case that they think that they can prove, very often there is negotiation that goes on and they will say, "would they plead guilty to a first offense rather than a second or take the chance on losing it on the second". Because very often if it went on a second offense they would lose their case. That is really the reason why. Sure, you can say, "well you can't do that anymore" and you force them to go to the trial for the DWI second and they may well lose that case and then the person gets off scott free and that is not right, because I don't think any of us knows a practice in the area or people in the area or have families that drive on the road that want to see TAPE INAUDIBLE. Another thing that we talk about is drunk drivers. It has nothing to do with being drunk. It is impaired. Everybody that comes into my office sits there and they say to me, "well, I wasn't that bad", and that has nothing to do with it. I have explained that to them that the law in New Hampshire doesn't mean drunk driving. Mothers Against Drunk Driving really should be MAID, Mothers Against Impaired Drivers. I mean that is the educational thing that needs to be out there. Any impairment. Impairment to the slightest degree is intolerable, not drunk drivers. It is the wrong sense because people think that they can have several and they can still walk so they are not drunk, so that has nothing to do with it. The reason that the amendment is what I think, a reasonable solution, is that in the trial of accident cases, particularly, it is very difficult sometimes for the police departments to get convictions in accident cases. They come along after the accident has happened, okay, so they don't have evidence of operation, they haven't followed the person down the road weaving. So right away, you don't have that to be able to tell the judge. The person may have been hurt slightly themselves, the driver, so they are disoriented, they are unsteady on their feet. They might even have the appearance of being somewhat intoxicated, just by appearance because they may have been somewhat injured. So those cases are very difficult for the police departments to prove. This amendment, I think, makes it easier for them to do that. And certainly this is a group of people that we certainly need to focus on when that happens. This in my mind would make it easier for the police officer's job to be done. I think further that enforcement is extraordinarily important. We used to have a thing, I don't know if they still do, but they used to call it the 'wolf pack', actually 'the saturation pack' state troopers or what have you that would join up with locals and they would go into an area on a Friday or Saturday night and they would saturate that area and they would get an awful lot of people done, arrested, and that certainly was a great thing. It worked extraordinarily well. That certainly, to me, enforce-

ment is extremely critical, lots of enforcement. The other thing is, it is clear to me that you can see from the law that above .03 is evidence as you can see on that second page, "but such fact may be considered with other competent evidence in determining the guilt or the innocence of the defendent". Well yes, the police departments are reluctant to bring people in. But I think that they should. If they stop somebody and they are impaired and they are an .04. .05, .06, .07, ,08, .09 or .10, they ought to bring them into court. I mean the social stigma is not pleasant to have to know that they have to take time off, they have to go through the process. Even if they are found not guilty, okay, they still have that situation where they have got to go to court and they have to hire an attorney and they have the embarrassment and they have got all of that. It serves as a deterrent in my mind that they should actually bring these cases into court. If they believe that they are impaired, I think, that they have got an obligation to bring somebody in no matter what the blood alcohol is. The law allows for that. It is evidence to be considered with a field sobriety test that they perform on these people, the operation and all of these types of things. Finally, I would suggest that if there are other questions about this, I suspect that the bill would end up in a Committee of Conference if this amendment is passed. And if it is issues relative to the burden of proof and things of that nature that needs to be addressed. We certainly should address those to make it reasonable. So that is what I would have to offer and that is why I find myself supporting this particular amendment as a reasonable thing to do under the circumstances.

SENATOR BALDIZAR: Senator Russman, you just brought up a comment about the Committee of Conference and I want to ask you just to see if I am technically clear on this and to make it clear to everyone else. If the House concurs with this amendment, there will be no Committee of Conference, is that correct?

SENATOR RUSSMAN: True, that certainly is one possibility.

SENATOR BALDIZAR: Thank you.

SENATOR BOURQUE: Senator Baldizar did ask me to look at this amendment. I did have the Assistant Attorney General, John Stevens, look at it. And I would like to say my opposition to this pending amendment and read into the record what he felt was why they would oppose it at this time. "The amendment does not address the central question TAPE INAUDIABLE or a per se level. It amends only the evidence section. It speaks only to accidents and fatal accidents, it has no deterrent or educational value". It goes on to say, "that .08 is scientifically and medically supportable. It is difficult to support that any level of blood alcohol concentration TAPE INAUDIBLE evidence of being under the influence of intoxicating liquor. Everyone always has an alcohol concentration, even without drinking. This amount would allow a teetotaler to be (prima facie) charged with DWI. What if you have one drink with dinner and get into an accident and that accident is not caused by alcohol. Let's say because of snow or ice? Under this amendment you would still be charged DWI". I won't yield to any questions. I just wanted to read that into the record.

Division vote requested.

Yeas: 11 - Nays: 12

Floor amendment fails.

SENATOR LAMIRANDE: Mr. President and members of the Senate, I just listened to quite a bit of testimony for and against the bill that we have got to make a judgement call on here. I can't disagree actually, with anyone who has spoken either in support or against it. Everyone has a valid argument. I have to make a comment though and I have to say that the issue that everyone seems to be looking at us to make a decision on is not an issue of numbers. The issue relating to the influence of intoxicating liquor or controlled drugs is legal accountability versus personal responsibility. You cannot make one person legally accountable for another without absolving that person of responsibility for their own behavior. Alcohol is not a stimulant, alcohol is not an aphrodisiac, it usually impairs sexual performance, particularly in males. As William Shakespeare observed long ago, "drink provokes the desire, but it takes away the performance". Drinking is promoted, approved and encouraged as an escape from problems, a means of relaxing and as a source of entertainment at social gatherings. But the approval suddenly turns to rejection when the drinker has had too much or drinks too often. Too much, however, is a hazy and undefined standard. One that has provoked the number crunch that we are seeing here. Treatment for alcoholism begins by sobering the person up and cutting off the supply. The next step is to restore the alcoholic's physical health. Alcohol is a depressant. Alcohol is classified as a legal conscious altering drug. The duration of effect TAPE INAUDIBLE in four hours. Addiction is often accompanied by a drug tolerance in which the user must take a larger and larger dose to achieve the desired effect. What I have done is basically the same thing as my colleague, Senator Barnes, has done. I didn't do it because the Union Leader provoked people or edged people into doing something like this. I am not a drinker. So it took me far less drinks to reach an .09 than it did Senator Barnes. I didn't have a driving course test; however, what they tested me on was the line test and the finger to the nose test. Well needless to say, we have a yellow line on the cement floor in the police station in Berlin and I couldn't even stay on the yellow line on the cement floor in the police station, so you can imagine that I didn't do very well when it came to the finger to the nose test; however, the policeman did comment that, now I don't want you to take this the wrong way, that I had a very good set of lungs when I blew into the breathalyzer, but that was because my husband made a comment that I don't drink and I don't smoke and I am not very much fun, to which I rebutted, "I shouldn't be the one taking the test, he is the drunk in the family, not me". Anyways, the point of the statement is that Senator Barnes had seven or eight drinks and he was .07 and I had three drinks and I was .09. Well he and I don't have the same tolerance to alcohol. He and I are not the same size, thank goodness. But it just goes to show you that what constitutes .09 and me would not have the same effect with Senator Barnes. What I am trying to say is, basically supports everyones testimony here. Senator Cohen stated that from .10 to .08 isn't going to make a difference to a person who drinks a lot, and you know, it is not. But it may help. And if it helps, it is fine. But the thing that I can see is if the accountability and the responsibility were on the individual who chooses to drink, now I chose to drink those three drinks, nobody twisted my arm. When somebody goes into a bar and chooses to drink, nobody twists their arm. The person who serves them the drink has to make a judgement call on this, they cannot tell by an individual who has a high tolerance to alcohol whether or not that person has had drinks prior to entering that establishment. They shouldn't be expected to make that judgement call. .01 to .08 places a

higher risk of responsibility on the server of alcoholic beverages. It could be a deterrent and it may not be a deterrent, but it shouldn't be a question of whether or not it is or it isn't. It should be a question of whether or not if I choose to drink then I am responsible for my own actions. I would not think of getting behind a wheel if I felt that I was even the slightest impaired. I passed out an enlarged copy of what constitutes a problem when you drink. This states that .05 blood alcohol content affect higher nervous centers, the drinker loses inhibition, foregoes conventions and courtesies and relaxes. Known as a physiological dependancy or when a person feels the need for drugs of alcohol to maintain an emotional or physiological well being, a user of alcohol can be classified in five catagories. The first two catagories are probably going to be more affected by .10 and .08 in the sense that someone who experiments, which is short term, it is motivated by curiosity. Secondly, recreational, a gathering, Christmas, you have somebody at your house and they may have a few drinks, that is it, okay? Now if they have five or six drinks and I don't follow that person around and they leave my house and they get into an accident and kill somebody, I am legally responsible, I served that person the drinks. But that person chose to drink, I didn't choose to give that person the drinks, they helped themselves more or less. I am all in favor of having self service. If you go into an establishment and okay, pour your own. If you choose to have 10 or 15, alright? Now the individual server is not responsible. I propose this very short amendment because where .08 is trying to get at the habitual offender, and trying to keep people off of the road to save lives, it has its good intentions. But it is missing one little part which is not clarified in 507-f:5. All that this amendment proposes to do is when the person misrepresents such consumption of the amount of such consumption, then the defendant or the server of the alcoholic beverages is not the one who is liable, but the individual who chooses to drink is the one that is liable. I had about seven years ago, my son was involved in an automobile accident and I think that it was in the paper, the Union Leader might have put something in about it. I think the Concord Monitor did a short blurb on it. He was hit by a gentleman, and I use the term loosely, who went through two red lights, smashed into the side of my son's vehicle and pushed that car across the intersection and into a parked car. My son had his seat belt on and he hit his head on the windshield and cracked his skull, broke the skin and he had a concussion and was kept overnight for observation. Somebody up there likes us, because, thank God, Keith was spared. In other instances maybe he would not have been spared. The irony of it all was that the individual who hit my son, was .25, .10 and .08 he didn't care about at all. He is and was an habitual drunk. He drinks all of the time. He had lost his license for DWI prior to this incident. One week later I saw him driving a vehicle. There is no way that he should have been on the highway. There is no way that he should be on the highway now. I feel that if the law was stricter on the other end, and I have said this before, then the habitual drinker is going to probably stop. I say probably, because I don't know, stop and think twice before they take another drink and get behind the wheel. Alright? .08 might make them say okay, gee, if I have seven drinks and I am at .08 maybe I had better not drink seven drinks, maybe I better only drink five and they have a high tolerance to alcohol, so five drinks is not going to physically impair that person. But you have to look at another aspect of this and that is what I am hoping that every Senator will do, okay? I am not against Senator Baldizar's amendment. I am not against .08. What I am against is the fact that a

habitual drunk can get back out there because he feels that he has no accountability and no responsibility. All the amendment proposes to do is to put the accountability and the responsibility where it should be, back on the person who chooses to drink. I just want to read you one thing from this psychology book that belongs to my son. They are talking about alcohol here now, okay? "The two most widely used downers or depressant drugs are alcohol and barbiturates. Its abuse has killed more people, sent more victims to hospitals, generated more police arrests, broken up more marriages and homes, and costs industry more money than has the abuse of heroin, amphetamine, barbiturates and marijuana combined". That is not me saying that, that is psychologists saying that. So I hope that you will vote in support of my amendment and in support of the .08 bill.

Senator Lamirande offered a floor amendment.

2145B

Floor Amendment to HB 137-FN

Amend the bill by inserting after section 17 the following new section and renumbering the original section 18 to read as 19.

18 Off Premises Consumption. Amend RSA 507-F:4, VI to read as follows:

VI. A defendant is not chargeable with knowledge of a person's consumption of alcoholic beverages or other drugs off the defendant's premises [unless the person's appearance and behavior would put a reasonably prudent person on notice of such consumption], ***when the person misrepresents such consumption or the amount of such consumption, unless the defendant's service to such person qualifies as reckless under RSA 507-F:5.***

AMENDED ANALYSIS

This bill lowers to blood alcohol concentration for legal intoxication from .10 to .08.

This bill expands the implied consent OHRV law to include physical tests and examinations for the purpose of determining whether a person is under the influence of intoxicating liquor or controlled drugs.

This bill also provides that a defendant will not be chargeable with a person's consumption of alcoholic beverages or other drugs when such person misrepresents their consumption of alcoholic beverages or other drugs unless the defendant's service was reckless.

SENATOR SHAHEEN: Senator Lamirande, I am not clear on exactly what the intent of your amendment is. If I had someone over for dinner and I was serving them and we had drinks and that person got picked up after they left my home, does this amendment make me liable or not?

SENATOR LAMIRANDE: Well, I think that you would have to refer back to the original 507-F:5, Senator Shaheen. Does that make you liable or not? If that does make you liable, this would absolve you from that. If it doesn't make you liable then this has no effect. All that that is stating is that if you have someone over to your house and they have had two or three drinks and they continue on to someone else's place, say that this is a New Years Eve party or a Christmas party and they choose to have two or three more drinks, okay, because you served them three drinks prior to, that you would not be liable, if you happen to be the last place that they hit because they didn't tell you that they had two or three drinks prior to. It is misrepresentation of the amount of alcoholic consumption when you go into an establishment or a home.

SENATOR SHAHEEN: So is this designed to limit the liability of the server in any case?

SENATOR LAMIRANDE: Exactly. Limit the liability of the server to the extent that the alcoholic consumption has been misrepresented by the individual who chooses to drink.

SENATOR SHAHEEN: So under this amendment, does that mean that a restaurant or a bar could not be held liable unless or if the person misrepresented the amount that they had to drink?

SENATOR LAMIRANDE: Yes.

SENATOR SHAHEEN: How could that be determined?

SENATOR LAMIRANDE: The way that that could be determined is an individual goes into an establishment and has three drinks. The individual leaves that establishment and has three more off of the premises, the bartender only has served three drinks. I know of an instance where this has happened. It has nothing to do with the T & C, okay? I know of an instance where this happened. An individual went into an establishment and was totally bombed. The bartender refused to serve this individual any kind of alcoholic beverages at all. The liquor inspector happened to walk in and said to the bartender, "you are responsible for that individual, he is here", the bartender said, "he didn't drink here", the inspector replied, "but he is here".

SENATOR SHAHEEN: Thank you.

SENATOR HOLLINGWORTH: Senator Lamirande, I don't think that you answered Jeanne's question, Senator Shaheen's question. The scenario that you just ran about the liquor inspector coming in and there is a guy there that is inebriated, that is true and that is a problem and that is why we have responsible people who make sure that that individual . . . what was happening before was that if somebody came in and they were drunk, to get them out of the place, because they didn't want them in their place because he was drunk, they were giving him his keys and saying get out of here. I mean that is what they were saying to him, because they know that they didn't serve him. I don't see how this piece of legislation addresses that problem at all. I don't know how somebody is going to determine, are they going to keep a list of how much the person has drank, their name and number of drinks, how are they going to determine . . . I can't envision how this is going to work. How they are going to know what the person drank and how are they going to . . . if eventually that guy goes out to drink and the next day they come in and say how much did you serve, Joe Jones? How is the bartender going to know what he served that individual and what the person told him, because it is a representation? How is he is going to know what the individual told him he had to drink?

SENATOR LAMIRANDE: If you look at RSA 507-F:5, section 6, which is the one that I would like to replace with this piece of legislation. Right now it states, "a defendant is not chargeable with knowledge of a person's consumption of alcoholic beverages or other drugs off of the defendant's premises, unless the persons appearance and behavior would put a reasonably prudent person on notice of such consumption". All that this does is expand on that part to include, "when the person misrepresents such consumption or the amount of such consumption". Because in fact, Senator Hollingworth, a person could have consumed two or three drinks off of the premises. If a bartender serving the alcoholic beverages, he may or may not ask the question, that is up to his discretion. But one who is using reasonable and prudent judgement might say when someone

comes off of the street who looks perfectly sober, say to that person, have you had anything to drink someplace else? If that person says no, and in fact was down the street at the other bar and had three drinks, and he then serves him one or two drinks and that one or two drinks may throw him into .08 or .10 or .03 or whatever. That is all that this does.

Floor amendment adopted.

Ordered to third reading.

Recess.

Out of recess.

HB 261-FN, an act transferring ownership of the Seabrook Commercial Fish Pier to the town of Seabrook. Economic Development committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: This bill is supported by the Department of Parks and Recreation. They recognize that the state only has a five year lease on it and is therefore less likely to invest in this property. The Yankee Fishermens Cooperation helps fund and maintain this property and they put in $150,000 recently. If it is owned by the town, improvements will happen more quickly and will help strengthen the fishing industry in this particular region; therefore, the committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 140-FN-A, an act establishing a task force to study economic incentives and technological opportunities to assist state and local governments and business and industry to increase waste reduction and recycling. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

2074B

Amendment to HB 140-FN-A

Amend paragraph II of section 1 of the bill by replacing it with the following:

II. There is established a task force to study the economic incentives and technological opportunities that could assist state and local governments and businesses and industries within the state in their efforts to advance waste reduction and the recycling and reuse of materials, to recommend strategies to increase investment in industries associated with source reduction, recycling, and composting, and to actively attract processors and end use markets for recycled materials to locate in New Hampshire. The task force shall be comprised of the following members:

(a) A member of the house environment and agriculture committee, appointed by the speaker of the house.

(b) A member of the senate environment committee, appointed by the senate president.

(c) The recycling coordinator division of waste management, department of environmental services.

(d) The director of the office of business and industrial development, department of resources and economic development, or designee.

(e) A representative of the university system of New Hampshire conversant in recycling and associated resource economics and development issues, appointed by the house agriculture and environment committee and the senate environment committee.

(f) A representative of the Sierra Club, New Hampshire State Council, to be appointed by the council.

(g) A member conversant in local or regional economic development issues and interests, appointed by the governor.

(h) A member representing the New Hampshire Business and Industry Association, to be appointed by the association.

(i) The coordinator of the governor's recycling program.

(j) The executive director of the New Hampshire Resource Recovery Association, or designee.

(k) A member representing New Hampshire the Beautiful, appointed by that organization.

(l) A member of the lending and financial community, appointed by the governor.

(m) A member of the New Hampshire Municipal Association, appointed by the association.

Amend paragraph II of section 2 of the bill by replacing it with the following:

II. The nature of the industries that process recycled commodities and manufacture products with recycled content, and industries, the products or services of which promote source reduction. Analysis by the committee shall include raw material and other inputs, labor requirements, typical plant size, environmental impacts, current geographical distribution, and other factors which may affect the feasibility and desirability of such businesses' location in New Hampshire. This and subsequent analysis shall focus on the problem commodities identified pursuant to paragraph I.

SENATOR RUSSMAN: This was passed unanimously out of Environment committee and it had to deal with recycling. It was a 13 member task force that developed these incentives. The state of the goal was reaching 40 percent by the year 2000 and it was designed to develop market based measures that will help the private sector progress in meeting their recycling goal. The amendment adds the membership to this task force from the New Hampshire Municipal Association.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

HB 253, an act designating a portion of funds collected under the oil pollution control fund to train and equip personnel in oil spill response. Environment committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: This legislation allocates part of the oil pollution control fund in the Piscataqua River Cooperative. The Piscataqua River is unique in that it is extremely fast flowing, the tides are tough, and there is a lot of oil delivery areas there. So this money would help train the people for a quick response for an oil spill that occurs in that area which they don't have right now. We even made it effective upon passage in terms that that was the amendment that we authored because right now, there isn't anything in place in terms of money to pay for oil clean ups.

Adopted.

Ordered to third reading.

HB 295, an act requiring commercial establishments that offer public docking or launching facilities to provide toilet facilities. Environment committee. Ought to Pass. Senator MacDonald for the committee.

SENATOR MACDONALD: HB 295 requires that any business that sells food or fuel to boaters must have a toilet available for its customers. There was strong support, we didn't say what kind of toilets, but just to have them.

Adopted.

Ordered to third reading.

HB 494, an act establishing a joint committee on recodification of solid waste laws. Economic Development committee. Ought to Pass with Amendment. Senator Russman for the committee.

2073B

Amendment to HB 494

Amend the bill by replacing the introductory paragraph of section 1 with the following:

1 Solid Waste Laws Recodification Committee. There is hereby established a joint legislative committee for recodifying the solid waste laws of the state. The committee shall consist of 4 members of the house of representatives, appointed by the speaker, and 4 members of the senate, appointed by the senate president. The committee shall review the state's existing laws relative to solid waste management and make recommendations to the general court which shall be consistent with the provisions of this act. The committee shall submit its findings to the speaker and the senate president on or before November 1, 1994. The committee's legislative recommendations shall:

SENATOR RUSSMAN: This bill simply sets up a joint legislative committee to revamp the state's waste laws. There have been a number of changes in recycling and landfills and composting. And to accredit Senator MacDonald's championing the idea of having two members of the Senate on the committee so that we are adding two members of the committee so that we have parity with the House.

Amendment adopted.

Ordered to third reading.

HB 603-FN-LOCAL, an act relative to energy efficiency in state facilities. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

2069B

Amendment to HB 603-FN-LOCAL

Amend RSA 21-I:19-c as inserted by section 1 of the bill by replacing it with the following:

21-I:19-c Interagency Energy Efficiency Committee. The interagency energy efficiency committee (IEEC) is established to evaluate energy performance contracts, which shall include but not be limited to, shared savings contracts, and positive cash flow financing agreements. It shall consist of the director, governor's office of energy and community services; the commissioner, department of administrative services; the commissioner, department of transportation; or their designees; one member from the minority party and one member from the majority party from the science, technology and energy committee, appointed by the speaker of the house. A majority vote of the committee members present and voting shall be required before an agency may proceed to implement such con-

tracts and agreements. The director of the governor's office of energy and community services shall serve as IEEC chairman, and the IEEC's necessary staff and resources shall be drawn from the governor's office of energy and community services.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill requires the department of administrative services to consider energy efficiency a significant criterion in decisions regarding the purchase of lighting, heating and cooling devices in buildings owned or leased by the state that are being constructed or renovated.

The bill sets out a procedure for state agencies to follow when entering into an energy performance contract. An energy performance contract should require the contractor to include all energy efficiency improvements which would recover all costs within 7 years at existing energy prices.

This bill establishes an interagency energy efficiency committee. The committee is responsible for evaluating energy performance contracts, shared savings contracts and positive cash flow financing agreements. A majority vote of the committee is required before an agency is allowed to implement such contracts and agreements.

SENATOR RUSSMAN: This bill, HB 603 is designed to encourage the state to weigh energy efficiency more heavily in its decision when it buys lighting, heating, and cooling devices and when it is instructed to restructure or remodel a building. The legislation is a result of two years of work with the House sponsors, the House ED & A committee, the state officials. The committee recommends ought to pass.

Amendment adopted.

Ordered to third reading.

HB 457, an act making fee splitting or accepting fees for referrals by pharmacists or pharmacies, or ownership of a pharmacy by a licensed practitioner, grounds for suspension or revocation of a pharmacy license. Public Institutions, Health & Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

2108B

Amendment to HB 457

Amend RSA 318:29, V(i) as inserted by section 2 of the bill by replacing it with the following:

(i) Any ownership or control of an ownership interest of a pharmacy within the state by an individual licensed to prescribe medicine, or a [for-profit] corporation, professional association or partnership consisting of such prescriber or prescriber's immediate family members, except such corporations as are expressly exempt from income taxation under section 501(c)(3) of the United States Internal Revenue Code. This shall not include ownership of investment securities purchased by the practitioner on terms available to the general public and which are publicly traded.

SENATOR J. KING: Currently, fee splitting is unethical and grounds for license suspension of revocation; however there is no statutory definition. HB 457 defines fee splitting as, "splitting fees or accepting fees for referrals from health professionals, licensed to prescribe medicine". The

bill also prohibits those licensed to prescribe medicine from owning pharmacies. This prohibition is necessary to curb the growth in the physician owned pharmacies and prevent preferential and over prescribing and physicians steering patients to their pharmacies. Currently 13 states have similar legislation. The bill also has an amendment which exempts charitable organizations as in USC 501(c)(3). We recommend ought to pass.

Amendment adopted.

Ordered to third reading.

HB 555, an act relative to freshness dating on sandwiches. Public Institutions, Health & Human Services committee. Ought to Pass. Senator Wheeler for the committee.

SENATOR WHEELER: Yes, I will be brief before the issue gets stale. This bill would require an expiration date to be marked on sandwiches. It gives the Commissioner of Agriculture rule making authority to accomplish that. It also exempts sandwiches that are expected to be sold within 36 hours so that mothers' clubs and charitable organizations could do that without being under this law.

Adopted.

Ordered to third reading.

HB 326, an act requiring persons who repossess motor vehicles to notify the local police or county sheriff of the repossession. Transportation committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: This bill is a very simple bill. It was put in to cover the situation where the person repossessing the car may not . . . or the person who possesses the car may not be the one who is making payments on the car and to avoid any situation that might arise, i.e. where an individual may call the police department and say that their car has been stolen. Why not notify the police before? This is against federal law. All that this does is that it would state that a person who repossesses a vehicle can notify the police station and tell them that they are going to repossess a vehicle. The New Hampshire Bankers Association is in favor of the bill. The committee recommended ought to pass.

Adopted.

Ordered to third reading.

HB 398, an act relative to driver education reciprocity. Transportation committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: According to the testimony received on this bill, both the Department of Safety and the Department of Education were in favor of the bill. The perceived problem that caused someone to file this bill was that students would continually go across the border to take courses because they were cheaper and shorter in another state. All that this does is it gives the Commissioner of Safety and Education the right to determine that if they feel that that drivers training course is in fact equivalent to New Hampshire's approved drivers training education course. The program is paid for by the additional fees received for vanity plates. Each school receives a flat $75 per student. If there are additional monies in the fund, it is then divided up on a pro rata basis. House Appropriations now has a bill on this to make it one lump sum for schools. Schools usually charge $125 for the course. The committee voted the bill ought to pass.

Adopted.

Ordered to third reading.

HB 631, an act modifying administrative penalties to be paid to the director of safety services and deposited into the boat safety fund. Transportation committee. Ought to Pass. Senator MacDonald for the committee.

SENATOR MACDONALD: HB 631 refers back to the boating safety funds. What it does is to take two sections out of the six and remove them out of there; in other words, they removed, "laws or rules relative to speed limits, safe passage, personal floatation devices, and decibel limits." They had these two under strict penalty. You had to pay $200 and if you took the course you got the money back. Well they took those two out and put them over in another section where it is just a penalty if you don't . . . you lose your right to operate or register a boat. It is just to make it easier and more convenient for the system.

Adopted.

Ordered to third reading.

SB 69-FN, an act allowing the liquor commission to grant cocktail lounge licenses to certain ballrooms which do not have a seating capacity for 500. Ways and Means committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

2090B

Amendment to SB 69

Amend the title of the bill by replacing it with the following:

AN ACT
relative to pricing and use of promotion funds
by the liquor commission.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Liquor Commission; Pricing and Promotion Support; Competition. Amend RSA 176 by inserting after section 17 the following new section:

176:18 Pricing and Promotion Support. The liquor commission shall be authorized to use such funds as may be budgeted for the implementation of sales, promotions, reduced markup, preferred markup, depletion or other programs involving reductions in regular pricing of products for the purpose of maximizing state revenues. These funds shall be used to support brands only where the brands are not controlled or represented by persons or corporations that, through stock ownership, interlocking directors or otherwise, have direct or indirect control over wholesale or retail wine or liquor businesses in direct competition with the New Hampshire liquor commission.

2 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

The bill requires that the commission use promotional funds only to support brands which are not controlled by entities which have interests in businesses which are in direct competition with the New Hampshire liquor commission.

SENATOR BLAISDELL: Mr. President and members of the Senate, the amendment to this bill is on page five of the calendar. Senate Ways and Means committee has amended SB 69 so that now it regulates the use of promotional funds for the New Hampshire Liquor Commission. SB 69 as

amended requires promotional funds only to be used to support brands which are not in direct competition with the liquor commission. Really it is a win-win situation. It allows the state to maximize its revenues while protecting the remaining New Hampshire brokers and that is my interest in it as Senate Finance Chairman. The Ways and Means committee urges your support of this legislation to protect the New Hampshire Liquor Industry.

SENATOR BARNES: Mr. President and members of the Senate, this looks to me like just a way to protect business in New Hampshire and it sounds like a tremendous way to take care of that. I just wanted to let you know that I am in full support of the amendment.

Amendment adopted.

Ordered to third reading.

HB 116, an act relative to fly fishing on the Connecticut River. Wildlife & Recreation committee. Ought to Pass. Senator Wheeler for the committee.

SENATOR WHEELER: What this bill does is it takes the last remaining part of the Connecticut River that is governed by statute and puts that in to be governed by rule with the rest of the river regarding fishing.

Adopted.

Ordered to third reading.

HB 159, an act designating a portion of the OHRV registration fees for trail acquisition. Wildlife & Recreation committee. Ought to Pass. Senator Wheeler for the committee.

SENATOR WHEELER: What this bill does is it allots a portion of the registration fee for OHRV vehicles to be used for trail acquisition and the committee fully supports the bill.

Adopted.

Ordered to third reading.

HB 577, an act allowing municipalities to post warnings regarding the ice on great ponds. Wildlife & Recreation committee. Ought to Pass. Senator Wheeler for the committee.

SENATOR WHEELER: What this bill does is to clear up a matter of jurisdiction that was unclear in the statutes and it allows municipalities to post warnings when the ice is thin on great ponds. We recommend ought to pass.

Adopted.

Ordered to third reading.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bills:

HB 281, to change the Salisbury and Warner town lines.

HB 336, relative to voter registration in cities.

HB 396, establishing a committee to study mechanisms of funding and providing long-term care for the elderly.

HB 609, designating segments of the Ashuelot River for the rivers management program.

HB 111, repealing the pre-admission screening program for persons entering intermediate care or skilled nursing facilities.

HB 118, repealing the prohibition against fishing on a certain portion of the Winnicut River.

HB 120, mandating that Workers' Compensation benefits collected under New Hampshire law be the exclusive remedy for a person injured in New Hampshire.

HB 135, exempting certain properties from the long-range planning process prior to the sale of the property by the Division of Human Services.

HB 183, relative to eligibility for parole.

HB 248, to allow municipalities to decide the number of members who serve on recreation or park commissions.

HB 252, allowing the Wetlands Board to adopt rules to expedite the permitting process for minimum impact projects.

HB 255, relative to interest rates on short-term borrowing by the State Treasurer.

HB 277, extending the powers of Heritage Commissions to Historic District Commissions.

HB 293, relative to notice to tenants prior to the sale of a manufactured housing park.

HB 324, relative to conditional discharge of a patient under the mental health laws.

HB 405, relative to financing of manufactured housing.

HB 424, permitting the State Treasurer to pay the costs of bank services from income generated by the State Treasury.

HB 428, authorizing the county convention for Rockingham County to employ a delegation coordinator.

HB 460, allowing the court to order offenders to pay restitution to the Victims' Assistance Fund.

HB 473, exempting certain charitable organizations from certain charitable trust filing fees.

HB 475, relative to special permits for the use of crossbows by physically disabled persons.

HB 488, authorizing the Commissioner of Corrections to recommend a prisoner to the Adult Parole Board if the prisoner has completed certain programs or treatment.

HB 562, relative to meetings regarding security issues in correctional facilities.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bills:

HB 199, requiring municipalities to use state police forms for license applications and licenses to carry pistols and revolvers.

HB 224, relative to the organization, accountability and liability of municipal fire departments.

HB 426, establishing a separate account in the Oil Discharge and Disposal Cleanup fund to reimburse owners of bulk storage facilities for the costs associated with gasoline and diesel product spillage.

Senator Currier moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendment to the following entitled House Bill sent down from the Senate:

HB 223, changing the Bureau of Off Highway Recreational Vehicles to the Bureau of Trails and expanding the bureau's duties.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 241, creating a committee to study the establishment of procedures for medical decision-making on behalf of patients unable to make decisions for themselves.

HB 310, relative to the definition of "bedroom" for the purposes of determining septic system size.

HB 528, relative to the payment of taxes by electronic funds transfer.

HB 598-FN, authorizing the medical examiner to release corneas in certain cases for use in corneal transplants.

RECONSIDERATION

Senator Cohen moved reconsideration on HB 153 prohibiting the buying and selling of bear, having voted with the prevailing side, I now move reconsideration, whereby we ordered the bill to third reading and final passage.

SENATOR COHEN: This request is to change the effective date of the bill from 60 days to upon passage.

Adopted.

HB 153, prohibiting the buying and selling of bear.

SENATOR COHEN: People who have applied for moose hunting permits now, those permits will be going out in June. It wasn't clear . . . what this bill tries to do is to try and clear up the rule making authority of the director in regard to setting fees and setting aside money for moose management. This just makes it effective for this year rather than the next year. It was request of the sponsor.

Senator Cohen offered a floor amendment.

2116B

Floor Amendment to HB 153

Amend section 4 of the bill by replacing it with the following:

4 Effective Date. This act shall take effect upon its passage.

Floor amendment adopted.

Ordered to third reading.

ANNOUNCEMENTS

SENATOR HOUGH (In the Chair): There will be a Rules committee meeting in the calendar and there will be a Rules committee meeting on April 13. What will be taken up at the Rules committee is a date of April 22 for the passage of non money bills on House Bills. That is an unrealistic date and we will be discussing a substitute date. I would tell you that the House date is May 20. So originally we are talking about a month differential. We will be discussing and setting a date that will be to our advantage. We don't want to find ourselves in compression, both in committee and with the staff in the committees like we found ourselves just prior to the February break. So anticipating that, we should have April and as much of May as possible to take care of the things that are important to us and that is what the subject will be. You should be aware that we are very concerned about that being too tight a date and we want to give ourselves the breathing room that we need. It is better to do it now then to wait until we are in crisis.

SENATOR WHEELER (Rule #44): Mr. President and members of the Senate, first of all I would like to thank Senator Barnes for the birthday cake today and the rest of you for enjoying it with me. But onto a more serious issue. I would like to address this newspaper article that was in the Manchester Union Leader this Monday. I want you all to know that I didn't have anything to do with this article. And there may be some confusion about where this came from. At the bottom of this article it says, "Bill Taylor Alliance For Family Rights". I had put out a letter for the Alliance for Good Government and I think that there was some confusion about that. They are two separate organizations. And to the best of my knowledge, none of their board members or any of their members overlap. The letter that I put out has nothing to do with the Senate. It mentions SB 210 and it doesn't even mention the sponsor. And the mailing is directed at the House and the Governor and not at the Senate. I want you to know that I have never made a public statement demeaning another fellow Senator. I would never embarrass the Senate and I would expect the same in return. Thank you.

SENATOR MACDONALD (Rule #44): Is it safe to make a comment? I just want to state that I have reviewed all of the minutes of our meeting of the Transportation committee on HB 137. I know that there has been some comments about certain individuals and I cannot find it up to this point, any reason to believe that anybody lied before the committee. And as far as the one place that they are talking about, I don't feel that one bad day in 40 years of business makes a big problem for that business. I know that the paper has been commenting about that and I just want to make clear that I have no reason to believe that that person lied to us.

SENATOR LAMIRANDE (Rule #44): I would also like to make a comment. I was present at the hearing on .08 in the Transportation committee when the individual made a statement. I have known this individual and his family for a number of years and I firmly believe that he would have no reason to misrepresent or make any kind of a false statement. I do not believe that there was any sort of misrepresentation or any lying at the hearing that we had.

SENATOR HOLLINGWORTH (Rule #44): Yes, I would like to bring up an issue that has been brought to me a couple of times and I don't know the accuracy of it. I would like to state that there have been some accusations that I should have taken a Rule #42 and not voted, there was a condition of ethics on the .08. I would have to say that I want to be on the

record clear, that I have been out of the business for seven years. My catering business when there is a license involved, the people get that license for themselves. I have absolutely nothing to do with them serving alcohol. They buy their alcohol. And the closest that I get to it is my girls do pick up the drinks after they are provided and I supply the glasses. But I would like to make it clear that if anyone had any problems with my voting on that, I want to make it clear that I do not believe that there is any conflict of interest on that. I felt that it was important that I speak because I do have, as a citizen legislator, I did have the background experience and I felt that it was important that I spoke to that issue.

SENATOR FRASER (Rule #44): Mr. President and members of the Senate, .08 is probably the most divisive issue that this body is going to face this year until we get to the budget. I just wanted to say that I have never been prouder serving this organization as I have on this very day. The presentations that were made, the questions that were asked, the amendments that were offered. There was no animosity and I wanted you to all know that I sat here and I listened attentively to everything that was said and I am very, very, proud to be a member of this group on this day, even though it is April Fools Day.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Thursday, April 8, 1993 at 1:00 p.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 69-FN, relative to pricing and use of promotion funds by the Liquor Commission.

HB 116, an act relative to fly fishing on the Connecticut River.

HB 137-FN, an act lowering the level for legal intoxication under the DWI laws from .10 to .08.

HB 153, prohibiting the buying and selling of bear.

HB 159, an act designating a portion of the OHRV registration fees for trail acquisition.

HB 253, an act designating a portion of funds collected under the oil pollution control fund to train and equip personnel in oil spill response.

HB 261-FN, an act transferring ownership of the Seabrook Commercial Fish Pier to the town of Seabrook.

HB 295, an act requiring commercial establishments that offer public docking or launching facilities to provide toilet facilities.

HB 326, an act requiring persons who repossess motor vehicles to notify the local police or county sheriff of the repossession.

HB 398, an act relative to driver education reciprocity.

HB 457, an act making fee splitting or accepting fees for referrals by pharmacists or pharmacies, or ownership of a pharmacy by a licensed practitioner, grounds for suspension or revocation of a pharmacy license.

HB 494, an act establishing a joint committee on recodification of solid waste laws.

HB 555, an act relative to freshness dating on sandwiches.

HB 577, an act allowing municipalities to post warnings regarding the ice on great ponds.

HB 603-FN-LOCAL, an act relative to energy efficiency in state facilities.

HB 631, an act modifying administrative penalties to be paid to the director of safety services and deposited into the boat safety fund.

Senator Disnard moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Thursday, April 8, 1993 at 1:00 p.m.

Adopted.

Adjournment.

April 8, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. Hays M. Junkin, Senate Guest Chaplain.

God, on this bright spring afternoon, direct our eyes, our minds, and our hearts to this, your world, to our country, and to this, our beloved state of New Hampshire. Enable us to envision the many faces that makeup the varied tapestry of life in our communities; help us to see the young and the old, the strong and the weak, the native and the visitor, and especially those among us whose voices cannot be easily heard. Inspired by these faces, enable this Senate, your servants, to carry on their important work with skill and care. Bless their deliberations, their dedication, and their loved ones. May their work always reflect Your loving will for the people of this state, of this country, and of this, Your world. Amen

Governor Stephen E. Merrill led the Pledge of Allegiance.

INTRODUCTION OF GUESTS
INTRODUCTION OF HOUSE BILLS

Senator MacDonald offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 52 - 624 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 52-FN-A, relative to certain hospitals exempt from the meals and rooms tax. Ways and Means committee.

HB 60-FN-A, setting a rate for the communications services tax. Ways and Means committee.

HB 61-FN-A, relative to the rate of the real estate transfer tax. Ways and Means committee.

HB 62-FN-A, relative to the meals and rooms tax for the period beginning July 1, 1993, through June 30, 1995. Ways and Means committee.

HB 214-FN-A, relative to results of toxicology tests and the salary of the forensic toxicologist and making an appropriation therefor. Judiciary committee.

HB 258-FN, repealing the "bingo card" program registration of certain interstate certificates or permits for truckers. Transportation committee.

HB 400, authorizing the Division of Water Resources to acquire the Oliverian Dam in Benton and transferring certain dam rights and easements to the Division of Water Resources. Environment committee.

HB 417-FN, providing a 5 percent cost of living adjustment for permanent policemen members of the retirement system and relative to when cost of living adjustments may be granted to retirement system members. Insurance committee.

HB 492-FN-A, relative to the veterans' cemetery committee and site suitability testing for a veterans' cemetery and making an appropriation therefor. Public Affairs committee.

HB 595-FN, allowing HIV testing for AIDS of a perpetrator of certain crimes at the request of the victim. Judiciary committee.

HB 624-FN, creating a unit within the Department of Environmental Services to certify certain scientists. Executive Departments and Administration committee.

COMMITTEE REPORTS

HB 602-FN, an act relative to claiming assets which have escheated to the state. Banks committee. Ought to Pass. Senator Barnes for the committee.

SENATOR BARNES: Normal banking accounts that have been unclaimed by the owner for seven years are turned over or escheated for the state by the banks. Why have the accounts escheated? For various reasons, a person opens an account for a grandchild for college or a person that has an account and does not tell anyone about it and then dies or has simply forgotten about it. Most of the accounts are for relatively small amounts. The banks will do their best to locate and notify owners that their accounts are being escheated and they need to claim them. Periodically, lists are published in the newspapers that accounts are being escheated and they need to be claimed. Once an account has been escheated to the state, no provision has been made to be able to claim it after the fact. The money is accounted for, including the interest, but the owner could not claim it. This bill would make it possible for those individuals to claim their property. The bill provides a procedure whereby a person can petition the Governor and Council to have their funds restored to them. The committee felt that it was a good bill.

SENATOR ROBERGE: Could you go into further detail on what escheated means?

SENATOR BARNES: Yes, I would be happy to explain this to the members of the Senate. Escheated: the reversion of lambs in English law to the lord of the fee when there are no heirs. That is the important part when there are no heirs, capable of inheriting under the original grant.

SENATOR COLANTUONO: Is there any time limit in this bill? In other words, can you ask to get money back that was escheated 20, 30, 40 years ago?

SENATOR BARNES: That is a good question and I am going to look at my chairman for the answer for that one, if I could?

Senator Barnes defers to Senator Fraser

SENATOR FRASER: Our understanding was that there is no limit. What this bill actually does, Senator, is after the seven year time limit that someone has the opportunity to go before the Governor and Council and request the return of their funds. To my knowledge when we heard the bill there was no set limitations as to how long the period would be after the seven years.

SENATOR PODLES: Senator Fraser, you just indicated something about seven years, what is the current statute of limitations right now?

SENATOR FRASER: Seven years.

SENATOR PODLES: Seven years, I thought it was reduced? I think that it is three years isn't it? That was changed. Could we get that information at some point from you.

SENATOR FRASER: The testimony that was given was that there was a seven year statute. This bill was supposed to address plans that were made after the seven years .

Senator Fraser moved to have HB 602-FN, an act relative to claiming assets which have escheated to the state, laid on the table.

Adopted.

LAID ON THE TABLE

HB 602-FN, an act relative to claiming assets which have escheated to the state.

HB 486, an act designating segments of the Piscataquog River for the rivers management and protection program. Environment committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I am happy to recommend HB 486 to you and we had a very positive hearing and received a lovely description of the river and the history of the river from Mr. Gordon Russell. We had no negative testimony and I hope you will support passage of HB 486.

Adopted.

Ordered to third reading.

HB 169-LOCAL, an act allowing town and school district meetings to be held outside the town or school district. Executive Departments and Administrations committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: Thank you. This bill was sponsored by Representative McKinney of Londonderry because of problems we had with a huge voter turn out that happened at our last meeting. Which it overflowed our available space in our high school to have a school meeting. There are some locations in Manchester that our town wanted to have the option to go to. The bill was amended in the House to make it clear that this can only be done so a town or a school district can hold a meeting outside their boundaries if the town does not have a facility with large enough seating capacity to accommodate a meeting. And the key provision that was put in to protect this process was that the selectmen have to arrange transportation from the usual polling place to the out-of-town facility and back.

Adopted

SENATOR W. KING: This amendment reflects the need of the Holderness School in the town of Holderness to change the chartered documents. Number one, to reflect the fact that there is no longer the Holderness School for Boys, but it is the Holderness School. And two is to rule the limitation on the assets that they may hold. The original charter, as you can see, limits them to assets $500,000. So clearly, one of their buildings is worth that alone.

Senator W. King offered a floor amendment.

2237B

Floor Amendment to HB 169-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

allowing town and school district meetings to be held outside the town or school district and relative to the charter of the Holderness School.

Amend the bill by replacing all after section 2 with the following:

3 Changing the Name of the Holderness School for Boys to the Holderness School. Amend 1878, 124:1 to read as follows:

SECT. 1 That William W. Niles, William Heywood, George L. Balcom, Leonard Sears, George Olcott, Charles A. Holbrook, Edward A. Renouf, and Josiah Carpenter, their associates and successors, be and they are made a body politic and corporate, by the name of the Holderness School [for Boys], and by that name may sue and be sued, and prosecute to final judgment and execution; and shall have and enjoy all the powers and privileges, and be subject to all the liabilities incident to corporations of a similar character.

4 Removing a Limitation on the Amount of Assets Which May be Held by the Holderness School. Amend 1878, 124:2 as amended by 1917, 354:1 to read as follows:

SECT. 2 Said corporation is hereby empowered to establish and maintain, in the town of Holderness, in the county of Grafton, a school for the education of youth, and for that purpose may acquire and hold by gift, bequest, or otherwise, real and personal estate to [an] ***any*** amount [not exceeding five hundred thousand dollars] ***without limitation***; may erect suitable buildings, employ proper teachers and assistants, and establish all necessary by-laws and regulations for their government, and exercise any other powers proper to carry into effect the objects of this act; provided, that said by-laws and regulations shall not be repugnant to the constitution and laws of this state.

5 Effective Date

I. Sections 3 and 4 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill allows town and school district meetings to be held outside the town or school district.

The bill also amends the legislation which incorporated the Holderness School for Boys by changing the school's name to the Holderness School and removing a limitation on the amount of assets which the school may hold.

Floor amendment adopted.

Ordered to third reading.

HB 245-FN, an act permitting the state treasurer to appoint two assistant state treasurers. Executive Departments and Administration committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This allows the Treasurer to add an additional assistant treasurer. They had one already, it is not two. It is just one that they are adding. They had this several years ago, but in a cut they lost one so it is actually bringing them back to the same.

Adopted.

Referred to the Division on Finance (Rule #24).

HB 298-Local, an act authorizing bonding by the town of North Hampton. Executive Departments and Administrations committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill allows the town of North Hampton to bond no more than $2,700,000 from the town to meet the tax commitment in the fiscal year of June 1994. The town went on to change its fiscal year and there was some significant impact on the town with regards to that in terms of some of the things that they ultimately did, and so that the town budget was not going, the tax rate actually was not going to be impacted. So therefore over a period of time they decided to bond it. This bill allows and authorizes that bonding specifically to that town of North Hampton. It does have a clause that it does have to have a commitment the 1993-94 tax year.

Adopted.

Referred to the Division on Finance (Rule #24).

HB 364, an act relative to the practice of architecture. Executive Departments and Administration committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This changes the violations in the architecture statute. The statute now reads "practice architecture without a license and that would be a violation". The change is that if you practice architecture without a license or advertise or hold oneself out for the public as being in the practice of architecture in this state without a license.

Adopted.

Ordered to third reading.

HB 470-FN-LOCAL, an act allowing selectmen or assessors to abate interest accrued on property taxes. Executive Departments and Administrations committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This is a very simple bill and it is an enabling bill.It permits the cities and towns to meet a depressed economy at times when they have to. The committee believes that this ought to pass. It believes it gives the local officials their needed flexibility in the abatement of taxes and the interest on unpaid taxes or a combination without complicating their existing accounting procedure.

Adopted.

Ordered to third reading.

HB 499, an act changing a reference to a veterans organization and the qualifications for veterans' property tax credits. Executive Departments and Administration committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill clarifies RSA 72 dealing with property tax credits for veterans. First of all, it changes one of the Veterans' Association names in the bill. Secondly, it defines 'surviving spouses' a little better than it had. The third part included a section in there to include "officers who have retired or have been discharged, as an officer ought to be separated from the services". They do not consider it to be a discharge, that raises an error that person who spoke said it would be a lot easier for them when they went to the town clerk. Because there is nothing in there that says that an honorable officer separated from service and they do not get a discharge.

Adopted.

Ordered to third reading.

HB 340, an act relative to technical changes in the Small Employer Insurance Law. Insurance committee. Ought to Pass with Amendment. Senator Russman for the committee.

2175B

Amendment to HB 340

Amend the introductory paragraph of RSA 415:18, XII as inserted by section 3 of the bill by replacing it with the following:

XII. No insurer shall, when issuing or renewing a ***group or blanket*** policy or contract of ***hospital or surgical expense or major medical expense*** insurance or any certificate under such policy or contract covered by this chapter, deny coverage or limit coverage to any resident of ***this state and who is principally employed in this state and to any other person who is a non-resident but who is principally employed in*** this state on the basis of health risk or condition except that a waiting period consistent with insurance department rules may be imposed for pre-existing medical conditions. If an insurer accepts an application for group ***or blanket hospital or surgical expense or major medical expense*** coverage, such acceptance shall be subject to the following:

Amend the bill by replacing all after section 6 with the following:

7 Filing of Rates. RSA 420-G:7 is repealed and reenacted to read as follows:

420-G:7 Filing of Rates. No policy or contract of insurance or any certificate under such policy or contract shall be issued under this chapter until the premium rates have been filed with and approved by the commissioner. Rates shall be deemed approved if not expressly disapproved in writing by the commissioner within 45 days after filing. Premium rates found to be unreasonable in relation to the benefits provided may be disapproved.

8 Effective Date. This act shall take effect July 1, 1993.

SENATOR RUSSMAN: The primary focus of this bill was to be sure there was no discrimination against people that worked in New Hampshire and were covered by insurance and the people that lived outside of the state, but worked in New Hampshire, but they would also be covered in the same manner, as far as termination rights and things of that nature. It just brought it into compliance as far as out-of-state people working in New Hampshire and New Hampshire people that work in New Hampshire.

Amendment adopted.

Ordered to third reading.

HB 443, an act relative to the applicability of the state-federal unemployment compensation extended benefit program and relative to the status of the Commissioner of the Department of Employment Security as an interested party in cases in controversy at the administrative level. Insurance committee. Ought to Pass. Senator Shaheen for the committee.

SENATOR SHAHEEN: There are two parts to HB 443. The first one would bring the eligibility requirement to extended benefits into conformity to the federal law for the period that is stated in the bill. The second part reaffirms that the Commissioner is an interested party in matters relating to the discussions of Appellate Board. This gives the Commissioner an opportunity to fulfill his obligation to benefits properly and maintain an adequate trust fund. There was no opposition to either one of these sections of the bill. I would urge the body to vote ought to pass.

Adopted.

Ordered to third reading.

HB 620, an act relative to unemployment benefits for domestic workers. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to urge ought to pass on HB 620. This bill extends the definition of employment for the purposes of the unemployment benefits to domestic service covered under the Federal Unemployment Act.

SENATOR PODLES: Senator Hollingworth, could you enlighten me on this bill and what does this mean now that we have someone doing our housework, are they going to be able to go on unemployment insurance?

SENATOR HOLLINGWORTH: Only if you are employed for 20 calendar weeks, a portion of a day for 20 weeks and that their gross salary is over $1,500. That is what is required by the federal law and this just brings New Hampshire in line. Because we are required to pay the federal unemployment and yet in New Hampshire we do not. So that people are paying and we are paying at a higher rate. We are paying at 6.2 percent because we do not have a mechanism in New Hampshire to collect. Where we would be paying at 5.4 percent otherwise. So we are paying more under the federal law than we are required to pay by federal law. The definition in New Hampshire is you have to pay at 20 different calendar weeks and gross salary has to be over $1,500.

SENATOR COLANTUONO: Does this mean that the person who employs the domestic worker has to pay into the fund?

SENATOR HOLLINGWORTH: The employer is now under the law and is required to pay the federal funds. And this now says that he pays a portion of the New Hampshire fund if he meets the requirement. And if he pays the New Hampshire fund, it would be instead of paying 6.2 percent to the federal alone. He would pay 3.5 percent to the state and 3.5 to the feds. It is a minor increase if any at all. He only has to pay it if he employs that individual. It was brought to our attention by Representative Weeks who was paying for a domestic person in the home to care for his elderly parents and he found out that we were not, when people who were in our employment left employment could not collect unemployment even though he had paid the amount of money that he was required to under law.

Adopted.

Ordered to third reading.

HJR 2, an act expressing the opposition of the general court to federal mandate legislation and asserting its right to determine and impose appropriate sanctions upon the driving privileges of offenders within its own state boundaries. Public Affairs committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This House Joint Resolution 2 is $30,000,000 important to the state of New Hampshire. Because he federal government passed a law with a little string attached to it for some highway fund money. The law says that unless states do certain things they are going to withhold five percent of our highway fund. Among those certain things that they wanted the states to do was to pass a law requiring mandatory license revocation for any drug offense even if it had nothing to do with the car. Well being from New Hampshire we kind of felt that the punishment should have something to do with the crime and so we looked for another way. There was an option. That option was contained in HJR 2 because that other option gives the state the right to pass a resolution such as this one and express its opposition to this type of legislation. The federal government has already seen a copy of HJR 2, and they have deemed it acceptable. The states of Maine, New Mexico, and Utah have already passed some resolutions. We urge quick passage of HJR 2.

Adopted.

Ordered to third reading.

HB 351, an act relative to the positions of town clerk, town treasurer, and tax collector and the terms for such positions. Public Affairs committee. Ought to Pass. Senator Barnes for the committee.

SENATOR BARNES: This bill provides that for each position established at any subsequent annual meeting under an article in the warrant, the voters may vote to determine if they are in favor in continuing to have a three-year term for the positions or changing a position to a one-year term.

Adopted.

Ordered to third reading.

HB 354, an act relative to electing planning board members in towns without a town council form of government. Public Affairs committee. Ought to Pass. Senator Barnes for the committee.

SENATOR BARNES: This bill provides an alternative process to electing planning board members if the local legislative body in a town without a town council decides that planning board members should be elected.

SENATOR COLANTUONO: What happens in a town that has a town council form of government?

SENATOR BARNES: What you have in place with that form of government is what you have now, this bill does not affect that.

SENATOR FRASER: Senator, in my town we appoint the Board of Selectman, appoint the members of Planning Board. Would this bill have any effect on the way things are being done in my town now?

SENATOR BARNES: It's enabling, if your town meeting wanted to go with this they could change it.

Adopted.

Ordered to third reading.

HB 114, an act relative to hunting restrictions. Wildlife & Recreation committee. Ought to Pass with Amendment. Senator Wheeler for the committee.

2067B

Amendment to HB 114

Amend the bill by replacing all after section 1 with the following:

2 New Paragraph; Definition Added. Amend RSA 207:1 by inserting after paragraph XXIII the following new paragraph:

XXIII-a. Revoke or Revocation: The recision, cancellation, nullification or invalidation of a license, the ability to acquire a license, or the ability to participate in any of the activities specified in the revocation.

3 New Paragraph; Definition Added. Amend RSA 207:1 by inserting after paragraph XXVI the following new paragraph:

XXVI-a. Suspend or Suspension: The temporary discontinuance or cessation for a period of time of a license, the ability to acquire a license or the ability to participate in any of the activities specified in the suspension.

4 New Section; Minors Hunting. Amend RSA 207 by inserting after section 2 the following new section:

207:2-a Minors Hunting.

I. No person shall knowingly permit any minor less than 16 years of age to hunt using a firearm, bow and arrow, or crossbow and bolt, except when accompanied by a person at least 18 years of age who is properly licensed for said activity. In accordance with RSA 626:8, II(b), such person shall be held criminally liable and fully accountable for any damage incurred or for any violations which may be committed by the minor under the age of 16 while hunting using a firearm, bow and arrow, or crossbow and bolt.

II. No minor under the age of 16 shall hunt using a firearm, bow and arrow, or crossbow and bolt, except when accompanied by a person at least 18 years of age who is properly licensed for said activity.

5 Negligent Discharge of Weapons; References Added. Amend RSA 207:37-a to read as follows:

207:37-a Negligent Discharge of Firearms***, Bow and Arrow or Crossbow and Bolt.*** Any person who shall negligently discharge any firearm, ***bow and arrow, or crossbow and bolt*** while on a hunting trip, in the field, or while target practicing, in such a manner that the life of any person is endangered or so as to cause damage to the property of another person, shall be guilty of a misdemeanor, and at the discretion of the executive director, the hunting license of such a person may be revoked for a period not to exceed 10 years.

6 Hunting While Intoxicated; Reference Added. Amend RSA 214:20, I to read as follows:

I. Any person who shall be convicted of hunting or attempting to hunt and who is in possession of a firearm ***or bow and arrow,*** while under the influence of intoxicating liquor, or any controlled drug shall be guilty of a misdemeanor, his ***hunting*** license shall be revoked and he shall not be issued a license to hunt for a period of one year thereafter.

7 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill limits when a person may permit a minor less than 16 years of age to hunt and modifies the prohibition against negligent discharge of firearms to include bow and arrow and crossbow and bolt.

This bill also modifies the definitions of revoke or revocation, and suspend or suspension in the fish and game statutes.

This bill also prohibits hunting with a bow and arrow while intoxicated.

SENATOR WHEELER: HB 114 does four major things. It clarifies that minors are not to be left alone while they are hunting in the woods. It adds reference to bows and crossbows in the negligent discharge sections. It also adds a definition for revocation because hunting licenses expire at the end of a calendar year and it adds a definition that lengthens that and say revocation can be as much as 10 years, and your right to purchase another license. And also adds bows and crossbows to the hunting while intoxicated section.

Amendment adopted.

Ordered to third reading.

HB 115, an act repealing reporting requirements for fish or game propagation licensees; and limiting the time bob-houses may be on public property and adding a penalty for violations. Wildlife & Recreation committee. Ought to Pass with Amendment. Senator Wheeler for the committee.

2068B

Amendment to HB 115

Amend RSA 211:17-a, II as inserted by section 1 of the bill by replacing it with the following:

II. Any owner of a smelt shanty or bob-house who shall allow [said] ***the*** structure to remain on public property or public waters or on the property of another without permission after April [seventh] ***1*** shall be guilty of a violation, and ***such owner's fishing license shall be suspended for one year***. The fish and game department may claim such property and ***its*** contents [thereof] and sell at a public auction to be held at the discretion of the executive director, or, if of no value and the owner cannot be apprehended, [said] ***the*** structure and its contents may be destroyed.

AMENDED ANALYSIS

This bill repeals reporting requirements for fish or game propagation licensees.

This bill requires bob-houses for ice fishing to be removed from public property and public waters by April 1. Bob-house owners who violate this law shall have their fishing license suspended for one year.

SENATOR WHEELER: Yes, what the amendment does where we just defined revocation in HB 114 it deletes that section and it requires people to get their bob-houses off the lake one week early and it puts a penalty of a suspended fishing license for one year if they don't.

Amendment adopted.

Ordered to third reading.

HB 138, an act relative to revocation of hunting and fishing privileges and repealing statutory provisions relative to a guide's license to take bear. Wildlife & Recreation committee. Ought to Pass with Amendment. Senator Wheeler for the committee.

2148B

Amendment to HB 138

Amend the title of the bill by replacing it with the following:

AN ACT
repealing statutory provisions relative to a
guide's license to take bear.

Amend the bill by deleting section 1 and renumbering the original sections 2 and 3 to read as 1 and 2, respectively.

AMENDED ANALYSIS

This bill repeals provisions relative to a guide's license to take bear.

SENATOR WHEELER: Yes, again with this bill we deleted the section that defined revocation because we covered that in HB 114. We are repealing the statutory provisions relative to guides' license to take bear antiquated statute that we don't feel that we need anymore.

Amendment adopted.

Ordered to third reading.

HB 151-FN, an act permitting the Department of Fish and Game to issue a special deer license to certain licensees, authorizing the executive director to determine the number of deer taken by an archery licensee, and relative to deer tags. Wildlife & Recreation committee. Ought to Pass with Amendment. Senator Cohen for the committee.

2197B

Amendment to HB 151-FN

Amend the title of the bill by replacing it with the following:

AN ACT
permitting the Department of Fish and Game to issue a special deer
license to certain licensees, authorizing the executive direct
or to determine the number of deer an archery licensee
may take, relative to deer tags and transferring the
responsibility of regulating the propagation of elk
and deer and sale of elk and deer venison
from the Fish and Game Department to
the Department of Agriculture.

Amend the bill by inserting after section 4 the following and renumbering section 5 to read as 17:

5 Marketable Animal; Reference Added. Amend RSA 427:2, VII to read as follows:

VII. The term "meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any [cattle, sheep, swine, or goats] ***marketable animal,*** excepting products which contain meat or other portions of such carcasses only in a relatively small portion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the commissioner under such conditions as he may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. [This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.]

6 New Paragraphs; Definitions Expanded. Amend RSA 427:2 by inserting after paragraph XX the following new paragraphs:

XXI. The term "marketable animal" means cattle, sheep, swine, goats, horses, mules or other equines, elk, and deer, provided, however, that "deer" shall not include Virginia white-tailed deer (Odocoileus virginianus).

XXII. The term "venison" means the meat of deer or elk.

7 Elk and Deer; Reference Added. Amend RSA 427:16, I(b) to read as follows:

(b) The custom slaughtering by any person, firm, or corporation of cattle, sheep, swine, [or] goats, ***elk, or deer*** delivered by the owner thereof for such slaughter;

8 Propagation License; Elk and Deer. Amend RSA 427:20 by inserting after paragraph I the following new paragraph:

I-a. No person, firm, or corporation shall propagate for sale, dead or alive, elk or deer, other than Virginia white-tailed deer (Odocoileus virginianus), without first procuring a license from the department of agriculture. The propagation of Virginia white-tailed deer shall be authorized pursuant to RSA 212:25.

9 New Subparagraph; License Fee Added. Amend RSA 427:20, II(b) to read as follows:

(b) $110 for commercial slaughterers [.];

(c) $50 for elk or deer propagators.

10 Marketable Animal; Reference Added. Amend the introductory paragraph of RSA 427:24 to read as follows:

Whenever any carcass, part of a carcass, meat or meat food product of [cattle, sheep, swine, goats, horses, mules, or other equines] ***any marketable animal***, or any product exempted from the definition of a meat food product or any dead, dying, disabled, or deceased [cattle, sheep, swine, goats, or equines, are] ***marketable animal is*** found by any authorized representative of the commissioner upon any premises where it is held for purposes of, or during or after, distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of RSA 427:2-17 or of the Federal Meat Inspection Act or the Federal Food, Drug, and Cosmetic Act, or that such article or animal has been, or is intended to be, distributed in violation of any such provisions:

11 Marketable Animal; Reference Added. Amend the introductory paragraph of RSA 427:25, I to read as follows:

I. Any carcass, part of a carcass, meat or meat food product of [cattle, sheep, swine, goats, horses, mules, or other equines,] ***any marketable animal*** or any dead, dying, disabled, or diseased [cattle, sheep, swine, goats, or equines,] ***marketable animal*** that [are] ***is*** being transported in intrastate commerce, or [are] ***is*** held for sale in this state after such transportation, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any proper court as provided in RSA 427:26 within the jurisdiction in which the article or animal is found, if:

12 Marketable Animal; Reference Added. Amend RSA 427:28, III to read as follows:

III. No person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or ***marketable*** animal in violation of this subdivision if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the commissioner the name and address

of the person from whom he received such article or ***marketable*** animal, and copies of all documents, if there are any, pertaining to the delivery of the article or animal to him.

13 Definition of Livestock; Elk and Deer Added. Amend RSA 427:33, II to read as follows:

II. The term "livestock" means cattle, horses, swine, sheep, goats, ***elk, deer other than Virginia white-tailed deer (Odocoileus Virginianus)*** and other species of animals susceptible of use in the production of meat and meat products;

14 New Subdivision; Sale of Venison. Amend RSA 427 by inserting after section 59 the following new subdivision:

Sale of Venison

427:60 Sale of Venison Imported from Outside the State; Licenses.

I. Notwithstanding the provisions of RSA 208:11, venison, other than Virginia white-tail deer (Odocoileus virginianus), imported from outside the state may be possessed, bought, and sold for use as food in restaurants licensed pursuant to paragraph V; provided that for each shipment there shall be a bill of sale bearing the date of purchase, the species of venison, the total weight of the shipment, and the place of origin. Said bill of sale shall remain with the shipment until the entire shipment has been sold to restaurant patrons.

II. The packaging on all imported venison which is offered for sale within this state shall be clearly labeled or marked with the country of origin.

III. Resident and nonresident wholesalers who wish to sell imported venison in this state as permitted in paragraph I shall procure a wholesaler's license from the department of agriculture to do so, the fee for which shall be $50. Said license shall expire on December 31 of each calendar year. Wholesalers shall provide bills of sale in triplicate, one copy of which shall be forwarded to the department of agriculture within 10 days of the sale, another copy of which shall be given to the restaurant owner, and the third copy of which shall be retained as a file copy by the wholesaler.

IV. Resident wholesalers licensed pursuant to paragraph III may import venison, other than Virginia white-tail deer (Odocoileus virginianus), into this state for use in processing of gift-packaged meats specifically for mail order.

V. Any hotel or restaurant wishing to sell venison as described in paragraph I imported from outside the state shall be required to obtain a license from the department of agriculture for a fee of $10 annually and shall have a bill of sale accompanying said venison pursuant to paragraph I. This license shall expire on December 31 of each calendar year. The bill of sale shall bear the species of venison, date of purchase, the total amount purchased, original place of origin, and wholesaler's name and address. Hotels and restaurants shall only sell venison purchased from a licensed wholesale dealer as set forth in paragraph III.

VI. Any person convicted under this section shall be guilty of a violation if a natural person and guilty of a misdemeanor if any other person.

427:61 Sale of Venison Raised by Licensed Propagators.

I. Notwithstanding the provisions of RSA 208:11 and 212:25, deer carcasses or venison, other than Virginia white-tailed deer (Odocoileus virginianus) raised within the state by persons, firms or corporations holding a valid license issued pursuant to RSA 427:20, I-a, may be possessed, bought and sold pursuant to the requirements set forth in this section.

II. The sale of Virginia white-tailed deer (Odocoileus virginianus) carcasses or venison for food shall be prohibited. Nothing in this paragraph shall prohibit the hunting or taking of Virginia white-tailed deer by a person hunting with permission on premises authorized pursuant to RSA 212:25 for the propagation of Virginia white-tailed deer. The provisions of RSA 208:11 shall apply to all Virginia white-tailed deer so taken.

III. For each sale of deer carcasses or venison as permitted by this section, there shall be a bill of sale bearing the date of purchase, the species of venison, the total weight of the deer carcass or venison, the name and address of the purchaser, and the name, address and permit number of the propagator making the sale. The bill of sale shall remain with the deer carcass or venison as long as it remains in this state.

IV. The propagator making the sale shall provide bills of sale in triplicate, one copy of which shall be forwarded to the department of agriculture within 30 days of the sale, another copy of which shall be given to the customer, and the third copy of which shall be retained as a file copy by the propagator.

V. No person, firm or corporation other than one holding a valid license issued pursuant to RSA 427:20, I, shall be permitted to sell deer carcasses or venison pursuant to this section; provided, however, a person who has obtained the appropriate resident or nonresident wholesaler's license described in RSA 427:60, III shall be permitted to purchase deer carcasses or venison pursuant to this section for resale to hotels or restaurants only.

VI. Any hotel or restaurant wishing to sell deer carcasses or venison obtained pursuant to this section shall be required to obtain the license described in RSA 427:60, V and shall comply with all the provisions therein.

VII. Any person convicted under this section shall be guilty of a violation if a natural person and guilty of a misdemeanor if any other person.

15 Reference Changes. Amend the following RSA provision by replacing "cattle, sheep, swine, goats, horses, mules, or other equines" or "cattle, sheep, swine, goats, horses, mules, and other equines" with "marketable animals": RSA 427:2, III, IV, V; RSA 427:4, I, II; RSA 427:5, I; RSA 427:8, I; RSA 427:9; the introductory paragraph of RSA 427:10; RSA 427:13; RSA 427:14, I; RSA 427:16, I(c); RSA 427:17; RSA 427:18, I; RSA 427:19, I; RSA 427:20, I; and RSA 427:21.

16 Repeal. The following are repealed:

I. RSA 212:30-d, relative to sale of venison imported from outside the state.

II. RSA 212:30-e, relative to sale of venison raised by licensed propagators.

AMENDED ANALYSIS

This bill:

I. Permits the department of fish and game to issue a special deer license to certain licensees.

II. Permits the executive director to determine the number of deer an archery licensee may take.

III. Prohibits a person from possessing a detached or perforated deer tag during the open season for deer unless the tag is attached to a deer.

IV. Transfers the responsibility of licensing and regulating the propagation of elk and deer and sale of elk and deer venison, other than Virginia white-tailed deer, from the department of fish and game to the department of agriculture.

V. Adds a new definition of "marketable animal," which includes elk and deer as well as animals previously included in the chapter, namely, cattle, sheep, swine, goats, horses, mules or other equines.

SENATOR COHEN: This is a tool for managing deer. We have had an excessive population due to a series of mild winters possibly with exception of this year. They are adversely affecting the deer habitat. This is a tool for deer management and it allows the possibility for an extra deer tag for hunters. Right now they do not have that possibility and this helps control the population. The amendment transfers the oversight of the domesticated deer and not your regular deer out in the woods. But domesticated deer from Fish and Game to the Agriculture Department, and Fish and Game had no objections to this. This will help tremendously market the products that are raised on the new deer farms and the committee urged that this ought to pass.

Amendment adopted.

Ordered to third reading.

HB 506, an act expanding the time during which a person is prohibited from using a light to locate wild birds or wild animals. Wildlife & Recreation committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: The Wildlife and Recreation Committee unanimously approved of this. What has been happening is some landowners are objecting that in certain months that people are going out and spotting animals at night and not to jack them but to spot them to hunt in the future. It is bothering families and people are getting upset and bothering the animals. All that this does is extend September through December rather than October through December permitting this type of activity. Fish and Game helped write the bill and they support it.

Adopted.

Ordered to third reading.

ANNOUNCEMENTS

SENATOR WAYNE KING: (Rule #44): You will notice that in front of you there is a packet of clippings from the Summit that David Harrington put together. I wanted to make sure that all of you saw that and saw that the Senate, I think, we can feel pretty proud of what we accomplished there. We got a lot of good attention and we have literally several hundred telephone calls or letters from people. Once we have compiled those we will share them with you. Two of them were negative out of all of that. We are responding to those people as well and just explaining things to them. You also should have received a copy of a letter, a draft letter that you can send out as you choose to for the newspapers in your area encouraging people who would like to make comments to do so. There will be further follow up from here. I will have more information about that after we have a chance to have the Economic Development committee meet with the House Economic committee.

RESOLUTION

Senator Delahunty moved that the rules of the Senate be so far suspended as to allow all bills to be placed on Third Reading and Final Passage, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

RESOLUTION

Senator Delahunty moved that the Senate be in recess until Thursday, April 15 at 1:00 p.m. for the sole purpose of receiving House Messages and Enrolled Bill Reports.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bills:

HB 117, limiting the possessing or taking of marine mammals and prohibiting the taking of a finfish or crustaceans with mobile gear and salmon and striped bass with any netting.

HB 223, changing the Bureau of Off Highway Recreational Vehicles to the Bureau of Trails and expanding the bureau's duties.

HB 241, creating a committee to study the establishment of procedures for medical decision-making on behalf of patients unable to make decisions for themselves.

HB 310, relative to the definition of "bedroom" for the purposes of determining septic system size.

HB 312, relative to protecting New Hampshire's heritage landmarks and establishing a review process.

HB 489, authorizing the establishment of municipal trails.

HB 528, relative to the payment of taxes by electronic funds transfer.

HB 116, relative to fly fishing on the Connecticut River.

HB 159, designating a portion of the OHRV registration fees for trail acquisition.

HB 253, designating a portion of funds collected under the Oil Pollution Control Fund to train and equip personnel in oil spill response.

HB 261, transferring ownership of the Seabrook Commercial Fish Pier to the town of Seabrook.

HB 295, requiring commercial establishments that offer public docking or launching facilities to provide toilet facilities.

HB 326, requiring persons who repossess motor vehicles to notify the local police or county sheriff of the repossession.

HB 398, relative to driver education reciprocity.

HB 555, relative to freshness dating on sandwiches.

HB 577, allowing municipalities to post warnings regarding the ice on great ponds.

HB 598, authorizing the medical examiner to release corneas in certain cases for use in corneal transplants.

HB 631, modifying administrative penalities to be paid to the Director of Safety Services and deposited into the Boat Safety Fund.

Senator Currier moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 137-FN, lowering the level for legal intoxication under the DWI laws from .10 to .08.

HB 457, making fee splitting or accepting fees for referrals by pharmacists or pharmacies, or ownership of a pharmacy by a licensed practitioner, grounds for suspension or revocation of a pharmacy license.

HB 603-FN-LOCAL, relative to energy efficiency in state facilities.

LATE SESSION

Third Reading and Final Passage

HB 114, an act relative to hunting restrictions.

HB 115, an act repealing reporting requirements for fish or game propagation licensees; and limiting the time bob-houses may be on public property and adding a penalty for violations.

HB 138, an act relative to revocation of hunting and fishing privileges and repealing statutory provisions relative to a guide's license to take bear.

HB 151-FN, an act permitting the department of fish and game to issue a special deer license to certain licensees, authorizing the executive director to determine the number of deer taken by an archery licensee, and relative to deer tags.

HB 169-LOCAL, an act allowing town and school district meetings to be held outside the town or school district.

HB 340, an act relative to technical changes in the small employer insurance law.

HB 351, an act relative to the positions of town clerk, town treasurer, and tax collector and the terms for such positions.

HB 354, an act relative to electing planning board members in towns without a town council form of government.

HB 364, an act relative to the practice of architecture.

HB 443, an act relative to the applicability of the state-federal unemployment compensation extended benefit program and relative to the status of the commissioner of the department of employment security as an interested party in cases in controversy at the administrative level.

HB 470-FN-LOCAL, an act allowing selectmen or assessors to abate interest accrued on property taxes.

HB 486, an act designating segments of the Piscataquog River for the Rivers Management and Protection Program.

HB 499, an act changing a reference to a veterans organization and the qualifications for veterans' property tax credits.

HB 506, an act expanding the time during which a person is prohibited from using a light to locate wild birds or wild animals.

HB 620, an act relative to unemployment benefits for domestic workers.

HJR 2, an act expressing the opposition of the general court to federal mandate legislation and asserting its right to determine and impose appropriate sanctions upon the driving privileges of offenders within its own state boundaries.

Senator Disnard moved to recess.

Adopted.

In recess.

Out of Recess.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following Bill:

HB 137, lowering the level for legal intoxication under the DWI laws from .10 to .08.

Senator Currier moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives has re-referred to committee the following Senate Bill:

SB 27, establishing a committee to study the apportionment of county taxes.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 84, relative to the disposition of land use fees by municipalities.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 18, increasing the amount of damage required to necessitate reporting a boating accident.

SB 20, relative to representation of business organizations in small claims court.

SB 37, adding and redefining terms relative to the New Hampshire pharmacy board.

SB 38, protecting against unauthorized access to teacher certification records.

SB 41, permitting selectmen to accept dedicated streets which have been approved by the planning board.

SB 46, relative to involuntary transfer or discharge of patients in health care facilities.

SB 114, relative to minors' settlements.

SB 123, relative to protection from infection by the human immunodeficiency virus and the hepatitis B virus.

SB 125, changing the name of the task force established for women at risk for alcohol and other abuse during pregnancy.

SB 142, intercepting the sweepstakes winnings of delinquent child support payors.

SB 221-FN, relative to grandparents' visitation rights.

INTRODUCTION OF HOUSE BILLS

Senator Fraser offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 51 - 693 shall be by this resolution read a

first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 51-FN-A, relative to establishing a tax on business enterprise value tax base and amending the Business Profits Tax and Business Corporation Act. Ways and Means committee.

HB 147-FN-A, establishing a committee to study the future and direction of the New Hampshire state hospital grounds and making an appropriation therefor. Public Institutions, Health and Human Services committee.

HB 163-FN, establishing a leaking underground storage tank cost recovery fund. Environment committee.

HB 164, relative to Workers' Compensation disability payments, lump sum payments, and safety inspections, and establishing an insurance fraud investigation unit. Insurance committee.

HB 196-FN, relative to the method for financing additional benefits for retirement system members. Insurance committee.

HB 205-FN-A, relative to the Statewide Education Improvement and Assessment Program. Education committee.

HB 440-FN, providing cost of living adjustments for certain employee members of the retirement system. Insurance committee.

HB 462-FN, relative to the Victims' Assistance Fund. Judiciary committee.

HB 594, relative to medical and surgical benefits for Group I and Group II retired employees. Insurance committee.

HB 607-FN, relative to the Plea-by-Mail Program. Judiciary committee.

HB 663-FN, making technical corrections to the securities laws and repealing 2 obsolete provisions regarding corporate stock. Banks committee.

HB 692, transferring rulemaking authority from the Current Use Board to the chairman of the Current Use Board, who will implement the recommendations of the board. Executive Departments and Administration committee.

HB 693, legalizing the actions of the Kingston town meeting. Public Affairs committee.

LATE SESSION

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Thursday, April 15, 1993 at 1:00 p.m.

Adopted.

Senator Disnard moved that the business of the day being completed, the Senate now adjourn until Thursday, April 15, 1993, 1:00 p.m.

Adopted.

Adjournment.

April 15, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

Here are two good April 15th thoughts for all politicians to consider and they are not the ones that you think. The first comes from the wise lips of Abraham Lincoln, not a bad politician, who died one hundred twenty-eight years ago today. "Better to remain silent and be thought a fool than to speak and to remove all doubt".

Second, it was eighty-one years ago today, that the Titanic sank to the bottom of the ocean. Did you know that most of the fifteen hundred who drowned that night could probably have been rescued by a nearby ship named the Californian if only the captain of that ship had been less intimidated by darkness and by ice. So be brave; lives depend on it.

Father in heaven, behold this crew of the ship of our state. Help them to navigate with humility and not with reckless arrogance. And let them never be content with mere rearrangement of the deck chairs. Amen

Senator Barnes led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

HOUSE MESSAGE

The House of Representatives has re-referred to committee the following Senate Bills:

SB 129, relative to the overnight use of vessels and prohibiting the discharge of sewage into certain waters.

SB 183-FN-LOCAL, requiring the tax collector to notify certain mortgagees prior to execution of a tax deed.

SB 235-FN-LOCAL, relative to involuntary emergency admissions.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 13, extending the reporting date of the committee studying the effects of substance abuse on health care and economic costs to the state.

SB 56, relative to coverage for intra-family or inter-spousal claims under liability insurance policies.

SB 64, extending the reporting date of the committee to study head injury cases.

SB 75, allowing a property tax exemption for solar-powered electricity.

SB 80, restricting the use of motorized craft on Goose Pond in Keene and Turee Pond in Bow.

SB 131, extending the reporting date for the committee studying gender equity in sports.

SB 190-FN, naming the Route 25 rest area in the town of Rumney as the Nathan Clifford Memorial Rest Area.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 51, relative to the authority of land surveyors to enter upon land.

SB 82, returning certain state-owned land to the town of Belmont.

SB 97, establishing a committee to study parking at Hampton Beach State Park.

SB 108, relative to uninsured and underinsured motorist coverage.

HOUSE MESSAGE

The House of Representatives has passed a bill with the following title, in the passage of which it asks the concurrence of the Senate:

HB 53, repealing the credit to the Business Profits Tax for payment of the Nuclear Property Tax, repealing the nonseverability of the credit to the Business Profits Tax, and reinstating the Franchise Tax on electric utilities.

SUSPENSION OF THE RULES

Senator Disnard moved that the Rules of the Senate be suspended to dispense with the holding of a hearing, the notice of a committee report in the calendar, and that the bill HB 53 be put on Second Reading at the present time.

HB 53, repealing the credit to the Business Profits Tax for payment of the Nuclear Property Tax, repealing the nonseverability of the credit to the Business Profits Tax, and reinstating the Franchise Tax on electric utilities.

Adopted by the necessary 2/3 vote.

HB 53, repealing the credit to the Business Profits Tax for payment of the Nuclear Property Tax, repealing the nonseverability of the credit to the Business Profits Tax, and reinstating the Franchise Tax on electric utilities. Ways and Means committee. Ought to pass. Senator Disnard for the committee.

SENATOR DISNARD: Mr. President and members of the Senate, I move that HB 53 be passed at this time. We have had several briefings on the bill. I think that all of our questions were asked and answered. The Attorney General was in attendance, and therefore, I move passage at this time.

SENATOR HOLLINGWORTH: I won't be long because I know that this body is going to pass this bill. But, I feel that I must stand and speak in opposition to it. We do have a resolution that will follow after, but I just wanted to be on the record, my concerns about this piece of legislation. It is not just because of the tax, the new tax, it is because of the policy. We in this body know that when we pass taxes we do it for several different reasons. Sometimes it is because we want to deter use of something. Sometimes it is to conserve on something. Other times, we just want to raise revenue. Which is, I think, the case in this bill. We have a case in which we need to raise revenue and to pay off a debt, a debt that was created because we accepted, last year, on the ill advice of our then acting Attorney General, and the staff that spoke, that this would be constitutional to pass the nuke tax and tax on the cost to the out-of-state ratepayers. We were warned well in advance by all of the states, and yet

we went, the body went forth and passed that tax; therefore, we have been faced with the responsibility of paying back that illegal taking. Now we are proposing a tax that will pay back that taking and still generate revenue for the state of New Hampshire. Just recently Governor Wells said that Massachusetts will be the number one energy efficiency state in the nation, that is his goal. Right now, Massachusetts is considered fourth in the nation for energy efficiency. We all know that we are trying to compete for the economic market. Governor Wells said that his state being number one in energy efficiency will be the driving force between his economic development and the New England region. I have major concerns about taxing something that was so vital to our economic growth and that is a policy that we need to make. We are putting not only one tax, but two taxes on electric growth, property taxes, and a sales tax, there is no mistaking it. We have heard from the Attorney General and from the PUC that there will not be a negative rate impact. But I have also heard from other experts that tell me that that is not to be guaranteed. Today when we talked to the Attorney General's Office, he said that if we put our resolution on the bill that it would jeopardize the passage of that and not allow us to go forth with the court decision. So you will see that that amendment is not attached to this and that we are not offering it today. But I really do want you to realize that what actions that we do end up taking today are going to affect the economic stability of the state and I don't think that any of us should do that in the dark. After all, we are planning the energy for putting on the lights. This was in the Globe and it shows that the Massachusetts consumers have won a significant victory. Attorney General Scott Harshbarger said, "this settlement provides a cash refund of substantial proportion of amounts previously collected by New Hampshire under the Seabrook Tax. It also provides a significant perspective utility tax relief". Now, my question is, if they are going to get relief, that means that somebody is going to have to pay. The article goes on to say, "those actions will shift the tax burden back to instate utilities", says Harold Judd, the Senior Associate at the Attorney General's Office who was New Hampshire's top negotiator. We would be collecting $20.5 million in which between $7 million to $8 million is to be collected from the out-of-state utilities. Under the old plan we collected $24 million in which 60 percent came from the out-of-state. So there is a reality, there is going to be money. Yesterday when we had our briefing, the Attorney General said that there is going to be $10 million raised from the franchise and another $3 million from the BPT. So the truth is that it is voodoo rate-making if you think that you can collect those kinds of revenues and not, somehow, have someone pay. I am just standing here because unfortunately, from the very first day that I came into this body and I was asked what I stand for, I said, "safe, affordable energy", and I haven't changed my mind, I am still strong to the belief that I supported back when I started.

Adopted.

Ordered to third reading.

SUSPENSION OF THE RULES

Senator Disnard moved that the rules be suspended to put HB 53 on Third Reading and Final Passage at the present time.

Adopted by the necessary 2/3 vote.

Third Reading and Final Passage

HB 53, repealing the credit to the Business Profits Tax for payment of the Nuclear Property Tax, repealing the nonseverability of the credit to the Business Profits Tax, and reinstating the Franchise Tax on electric utilities.

RESOLUTION

SENATOR SHAHEEN: As the Senate knows despite the promises that we have been given relative to the passage of HB 53, we don't have any real guarantees that this is not going to impact rates. What this resolution is designed to do is to give the sense of the Senate that in passing HB 53, it is our understanding that all of those assurances that we have been given by the Governor and by the Attorney General and by all of those who have worked on this settlement agreement, that it will in fact, not impact on rates and that we can be assured that in passing the bill, that we will recoup money to the state of New Hampshire without having an adverse affect on rates. So I would ask that the body pass this resolution so that we can offer whatever guarantees possible that we have that to our knowledge, HB 53 is not going to have an adverse impact on rates for the people of New Hampshire.

Senators Shaheen and Hollingworth offered the following Senate Resolution:

SR 8

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

affirming the Senate's position in
passing HB 53-FN-A.

Whereas, the Senate has before it HB 53-FN-A, "An Act repealing the credit to the Business Profits Tax for payment of the Nuclear Property Tax, repealing the nonseverability of the credit to the Business Profits Tax, and reinstating the Franchise Tax on electric utilities;" and

Whereas, members of the Senate are concerned about the lawsuit pending in the United States Supreme Court; and

Whereas, ongoing negotiations among the parties have resulted in an agreement to resolve this matter, and HB 53-FN-A is a direct result of this agreement which represents the agreed-to positions of all the parties; and

Whereas, on April 13 the New Hampshire House of Representative passed HB 53-FN-A to the Senate, and on April 14, the officials of the State of New Hampshire who developed HB 53-FN-A provided an explanation and analysis of the proposed settlement to the Senate and provided assurances that implementation of this complex legislation, in and of itself, would not result in the imposition of any increase in New Hampshire electric utility rates prior to January 1, 1995; and

Whereas, if HB 53 is enacted expeditiously, litigation will not continue, resulting in millions of taxpayer dollars no longer being at risk; now, therefore, be it

Resolved by the Senate

That the Senate supports the enactment of HB 53-FN-A, with the understanding that approval of this legislation is based on assurances by the State's representatives that it is in the best interests of the State of New Hampshire and its citizens that this matter be expeditiously resolved in accordance with the terms of the settlement; and

That implementation of this legislation will not, in and of itself, result in rate increases prior to January 1, 1995, for individuals or businesses in New Hampshire.

SENATOR BARNES: I would like to commend Senators Shaheen and Hollingworth for their resolution and I am personally strongly in favor of it. I hope that the rest of the body will go along with it.

Recess.

Out of recess.

SR 8 is adopted unanimously.

COMMITTEE REPORTS

SB 138-FN-LOCAL, an act to return general fund surpluses to the cities and towns. Ways and Means committee. Inexpedient to Legislate. Senator McLane for the committee.

SENATOR MCLANE: We have three bills on the general subject of general fund surpluses returning to cities and towns. This is the bill that we did not chose and we will present you with two others as ought to pass.

Committee report of inexpedient to legislate is adopted.

Senator Pignatelli in favor of SB 138.

SB 145-FN, an act relative to liquor licenses for full service restaurants. Ways and Means committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: The committee recommended this unanimously ought to pass.

Adopted.

SENATOR BALDIZAR: I do have an amendment to SB 145 and it is really very simple. All that this does is to allow someone who has already paid for a catering license, they have already paid $1,200 for a catering license. It allows them to have a supplemental license which will be $600 in addition to the catering license so that they can hold Sunday Brunch 50 days a year. We felt that there was inequity with having to pay $1,200 for a full license when they were only going to be doing Sunday Brunch or several events a year. I checked with the Liquor Commission and I checked with the New Hampshire Lodging Association and there were no objections. The Liquor Commission and I believe that this will affect very few people in the state so I don't think that this will have a major fiscal impact.

Senator Baldizar offered a floor amendment.

2379B

Floor Amendment to SB 145-FN

Amend the title of the bill by replacing it with the following:

AN ACT

relative to liquor licenses for full service restaurants and to fees for supplemental cocktail lounge licenses for caterers.

Amend the bill by replacing section 2 with the following:

2 Supplemental Liquor License Fees; On-Site Caterers. Amend RSA 178:20, V(e)(1)(B) to read as follows:

(B) The commission may issue a supplemental license to an on-site caterer licensed to sell beverages and liquor with food to the public on dates approved by the commission when no private function is being catered under RSA 178:20, V(1)(A), unless such premises which have been approved by the commission are capable of being physically separated between public and private functions. The supplemental license may be issued to the applicant for 18, 36, or 52 events per license year. [for] The fees ***charged for such license shall be 1/2 the amount of the fees*** established in RSA 178:27, I f***or 18, 36 or 52 events, as applicable.*** A person issued a supplemental license under this subparagraph shall meet all requirements of RSA 178:20, I-IV. The caterer shall request the commission's approval at least 5 days before any scheduled event to be serviced by a supplemental license. The commission may suspend or revoke the caterer's supplemental license without affecting any other license issued for the premises.

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill exempts restaurants with at least $50,000 in annual food sales from the requirement for a liquor license that at least 50 percent of the gross sales of the licensee be from food. Currently only restaurants with at least $100,000 in annual food sales are exempt from the 50 percent requirement.

The bill also decreases the fee for a supplemental cocktail lounge license for an on-site caterer.

SENATOR MCLANE: This is a little bit unusual procedure because obviously this amendment has not had a public hearing, but it seems that if it went on this bill at this time it could go over to the House and they could consult formally with the Liquor Commission and get a fiscal note, so we would be happy to have this amendment go forward.

Floor amendment adopted.

Ordered to third reading.

SB 162-FN-LOCAL, an act authorizing the Sweepstakes Commission to establish video lottery games. Ways and Means committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

2382B

Amendment to SB 162-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Video Lottery Games. Amend RSA 284 by inserting after section 21-u the following new subdivision:

Video Lottery Games

284:21-v Video Lottery Games. The sweepstakes commission is authorized to establish video lottery games pursuant to rules adopted under RSA 541-A. Such video lottery games shall be established only in those locations licensed by the liquor commission for the on-premise sale of liquor and operated only during those hours licensed by the liquor commission for the sale of liquor, and in those locations licensed by the pari-mutuel commission. In those locations licensed by the pari-mutuel commission the pari-mutuel commission shall adopt rules relative to the placement and operation of video lottery games pursuant to RSA 284.

I. A licensed video lottery terminal shall be linked under a central communications system maintained and operated by the sweepstakes

commission to provide full auditing and accounting program information and security procedures to ensure the integrity of the state as approved by the commission.

II. The central communications system to link all video lottery terminals shall be acquired by the sweepstakes commission through a competitive bid process. The sweepstakes commission shall, through the competitive bid process, require the successful bidder to adopt standards utilizing the latest technology and making available the maximum variety of games. The central communications system shall be a separate system from other lottery systems approved by the sweepstakes commission.

III. All licensed video lottery games shall be compatible with the central communications system operated by the sweepstakes commission.

IV. Video lottery games shall be supplied by more than one vendor as licensed and approved by the sweepstakes commission except for those locations licensed by the pari-mutuel commission, in which case those machines shall also be approved by the pari-mutuel commission.

V. Before any video lottery game is distributed, sold, or placed for public use in this state, the machine and licensed establishment where that machine is placed shall each be licensed by the sweepstakes commission. The pari-mutuel commission shall authorize the placement of video lottery machines in those locations licensed by the pari-mutuel commission as soon as the sweepstakes central communications system is operational, and the sweepstakes commission shall authorize placement of video lottery games in other licensed establishments 6 months after the central communications system is operational.

VI. The license shall be conspicuously affixed to the video gambling machine. Any machine which does not display the license required by the commission is contraband and possession of it constitutes a felony.

VII. All records maintained by licensees shall be open to inspection upon request by the sweepstakes commission, and all reports and amounts reported to the sweepstakes commission shall be certified.

VIII. No video lottery game shall accept more than $2 to be played on any one game, except those games located in those locations licensed by the pari-mutuel commission where the maximum bet on any one game shall be set by the pari-mutuel commission not to exceed $10. The value of free games or prizes which may be awarded per game shall not exceed $1,000, except at pari-mutuel facilities which may offer progressive jackpots. A video lottery game shall dispense to each winning player a ticket indicating the amount won and containing information on how to redeem the ticket for cash. In those locations licensed by the pari-mutuel commission, the pari-mutuel commission shall adopt rules relative to the awarding of prizes which shall be at a rate of no less than 88 percent of the amount bet. All other locations licensed by the sweepstakes commission shall award prizes at a rate of not less than 88 percent and not more than 91 percent of the amount bet, as set by the sweepstakes commission, and those licensees shall immediately pay a winning player the amount won on a video lottery game upon presentation by the player of a winning ticket at the establishment where the ticket was obtained.

IX. No more than 5 video lottery games shall be placed at any one licensed establishment. A licensed establishment may apply to the sweepstakes commission for a waiver of this provision under rules adopted by the sweepstakes commission under RSA 541-A. However, within a 50-mile radius of a licensed pari-mutuel facility that operates live racing for 250 days or more per year, the maximum number of video lottery games

that may be granted by waiver shall be no greater than 20. Exempt from this video lottery game maximum shall be those pari-mutuel facilities existing as of July 1, 1992. Such facilities may make application to the commission for the placement of an unlimited number of video lottery games.

X. No person under the age of 21 shall play a video lottery machine in an establishment licensed by the liquor commission for the on-premises sale of liquor.

XI. This subdivision in no way diminishes the rights, responsibilities, and duties granted to the pari-mutuel commission under RSA 284.

284:21-w Video Lottery Game Fund. A video lottery game fund is established, and this fund shall be nonlapsing and continually appropriated.

I. No less than 35 percent of the net video game machine income shall be reported and remitted to the sweepstakes commission.

II. Moneys derived by the sweepstakes commission from video lottery games shall be deposited into this fund, and shall be used to fund foundation aid to public education in New Hampshire. Any revenue received above and beyond a fully funded foundation aid program shall be returned by the department of education on a per pupil basis to local school districts.

284:21-x Pari-Mutuel Facilities; Live Racing Requirements. Video lottery games may be operated at licensed pari-mutuel facilities, provided that the licensee has scheduled at least 100 days of live racing in the calendar year in which the video lottery games are being operated, or the licensee conducts live racing on the day on which the video lottery games are being operated.

2 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill authorizes the sweepstakes commission to establish video lottery games, and provides for relevant rulemaking and procedures. A portion of the revenue derived from video lottery games shall be used to fund foundation aid.

SENATOR BLAISDELL: Mr. President and members of the Senate, I am going to try and keep my remarks brief because I am going to turn this over to Senator Currier when I get done, but I do have a few things to say. I have before me the Senate Journal of 1983 when this bill was brought in. A couple of my good friends at that time certainly opposed me, and one of them of course, was Senator McLane, but that was 10 years ago, and certainly we are still friends and have been friends over those 10 years, and we will continue to be friends. As I looked at the journal, I guess that maybe it was Senator Roberge who made me forget who Minnie Carswell was. But Minnie Carswell was in the Senate and I didn't remember that she sat next to me. So I guess, Senator Roberge, you have done your job over the years. I would like to talk to you a little bit about the structure of the bill. It provides the racetracks with an opportunity to compete against the offtrack betting facilities and the video lottery games which inevitably will be coming to Massachusetts. The bill is a result of a lot of hard work by Senator Currier and the Ways and Means committee to bring forward legislation that addresses the concerns of both the racetracks and the Pari-Mutuel Commission and the Sweepstakes Commission. This bill prevents video lottery games from being used illegally. By having the Sweepstakes Commission electronically tied to all of the machines in a central computer that will audit and track every dollar wagered. In addition, the Pari-Mutuel Commission will regulate and

police those facilities that are licensed. I might add before this Senate that the reputation of the Sweepstakes Commission is unblemished and it is almost 30 years of existence. Of course the Pari-Mutuel Commission has an unblemished record for more than 30 years. This bill will not increase illegal activities but will in fact decrease the already existing illegal gaming that is going on right now in the state of New Hampshire. I might add that furthermore, the state is not receiving one dime from the estimated 2,000 to 2,500 video poker machines that are currently being used in New Hampshire, many of which are used for illegal gambling. I guess that I am asking you to be honest with yourselves. The state is already into the gambling business. You can be purist and say that the gambling bunnies should not fund education, but the fact is, that we already use the proceeds from electronic lottery games to fund education today. Some will say, I am sure, that this will raise the stakes in the state of New Hampshire. I would only have you ask or look at any of the larger bingo games today. In Newington, New Hampshire, for instance last week, just this past week, a church held four $10,000 prize games in one evening. It cost $60 a game to play so some people could spend over $240 to play just these four games. Is that not gambling on the large scale? I want you to remember, and don't forget that in many cases the biggest money for charitable organizations in New Hampshire is the sale of the Lucky Seven tickets which are sold at bingo activities. We supply those Lucky Seven tickets to the charitable organizations. As you know the debate is going on in the state of Massachusetts and it is hot and heavy. The state is in the gambling business, and in order for us to continue to receive these dollars we must change as the marketplace changes. This is all the more true for the dog and horse racing tracks that are already seeing revenues decline due to the opening of the casinos in Connecticut and the use of video lottery games for the racing facilities in Rhode Island. Members of the Senate, I think that this is a good bill. I think that it protects the interest of our state and helps provide more dollars for education, a goal that we all share, I am sure. This bill also allows the New Hampshire dog and horse racing industry to compete in the marketplace and that is rapidly changing today, ladies and gentlemen. I urge you to vote for this legislation. I ask you to remember that this state, the cost of educating our children, these fine young children sitting in front of us, good looking too. It cost $1 billion to educate the children of our state, $700 million comes from the property taxes. Just a couple of points and then I will sit down. If this can really lessen that burden on the property taxpayers in our state, then I am for it; if the monies derived from this bill will mean that the libraries in our schools will be a little bit better, then I support it; if it means that our athletic programs or that we helped them to survive, I don't know what I would have done if I didn't have an athletic program in high school, I probably would have been a bum all of my life, I suppose, I am for it; if it means that our teachers will be better trained, then I support it; if it means that our children will have a better education, I support it; if it means that a roof can be fixed, if it means that asbestos can be removed from a school, I support it; if it means that our heating plants in our schools can be fixed, then I support it; and last but not least, if this bill will in any way help the tracks to survive and to protect the millions of dollars in payroll and all of the other offshoots that these tracks have in the state of New Hampshire, hotels and restaurants, gas stations and all of the supplies that they buy, then I support it. This legislature, by the way, I am sure that you are going to tell me has been very good to the tracks in this state. But I want to remind you that

the tracks in this state have been very good to the state of New Hampshire too. The millions and millions of dollars that they have brought in. They have done it, I believe, without scandal. They have worked hard to be a part of their communities. I know for one thing, that the kids in my area will never know what the Hinsdale raceway has done for their programs over the years. I say that they have been good for the state, and I hope that you will support it. I am going to defer now to Senator Currier who can speak on this. If you want to ask me questions, I will be glad to answer them, but I think he will be the best person to talk to because he has been the architect of this. I will defer to Senator Currier.

SENATOR CURRIER: Mr. President and members of the Senate, I hope that you will join me today in supporting this measure for the taxpayers and the children of New Hampshire. I, too, have some reservations about gambling as a whole, but I look at this in a different light. I see this in, and have since the inception of this, as an enhancement of the lottery commission and the next logical step to the instant sweepstakes scratch tickets. When I say the next logical step, I mean because of the computer technology and so forth and all of the enhancements that go along with it. The next logical steps in that whole sweepstake product, is obviously, the video lottery or video poker machines as they are commonly referred to. We have put together a bill that I think Senator Blaisdell has explained in significant detail. One of the things that I wanted to make sure that was paramount in the design of this bill, because a lot of people have some significant questions regarding the integrity and the honesty and the operation of any type of gambling effort, was the safeguards within the program. You would build in the flexibility because what we are talking about here is basically two gaming kinds of commissions and a liquor commission. So we are talking about three commissions that would be interwoven within this bill. There is an age restriction regarding the establishments. It is an age controlled environment that would be controlled by the liquor commission. Then the overall operation of the mainframe computer and all of the other ancillary things related to that would be monitored by the sweepstakes commission with a new separate computer system that would not be tied into the current 'Megabucks' or 'Cash Lotto' system, so that it would be totally segregated. The Pari-Mutuel Commission because of the nature of the beast, and I say that not negatively, but because of the complexity of the Pari-Mutuel dealings and the commission, they operate under a federal statute as well as a state statute, and the fact that the competition is so dramatic and different and unique that we had to build in after listening to a lot of the debate that was going on in the House relative to some of these same issues, on different bills that dealt with tracks only and so on and so forth. We had to build in the uniqueness so that we would maintain the competitive nature of the gaming process with video lottery at the tracks because Massachusetts, as I understand it, has already gotten a copy of this amendment. They are already looking at points in it to find out how they are going to maintain their competitive edge over New Hampshire. We have addressed a lot of the concerns, there are still, obviously, some other things that I think will come to the table as we develop a dialogue with our colleague, the House, regarding this issue and also our Executive Branch colleague in terms of what this will do for the cities and towns. I made a pledge in my campaign, and that was to do anything and everything I could to return money back to the cities and towns. So far, this is the only thing that significantly will return money back to the cities and towns to the point where it will fully fund Foun-

dation Aid. I would urge my colleagues to support this measure and pass it on to the House where, obviously, there will be significant additional debate. One other point that I would like to make is this; in the Manchester Union Leader this morning there was a column by Donn Tibbetts, about "Tracks only, video poker or nothing, says Merrill". The Governor made those statements relative to the original Senate Bill 162 prior to the publication of the amendment to the bill. So I am not sure how the Governor feels about this, because some of the questions that were asked of the Governor, his answers didn't reflect some of the changes that were made in the bill from the Ways and Means Committee's presentation. But the other thing that I felt was kind of coincidental was the headline that read, "Manchester Police Get Subpoenas", "Chief denies charges". Those headlines tie into the illegal video poker machines that are now used in the state of New Hampshire. This bill would clean up that mess and make those machines illegal. So it is kind of a side thing that would help to deal with the bogus machines that are out there. I won't belabor it anymore than that. I urge you to support the committee amendment and then the ought to pass with amendment motion. I would be happy to answer any questions if there are any.

SENATOR PIGNATELLI: I rise today in support of the committee amendment and the motion of ought to pass. None of us in this chamber should be surprised that New Hampshire is considering this measure. I would find it hypocritical of us to prevent video poker when we have in our state a myriad of gaming opportunities. We must remember that our state was the first in establishing a statewide lottery. That on any given night we can play bingo. And that many of our social service agencies rely on casino nights to raise the money that they need to provide valuable services to our residents. Like it or not, New Hampshire already has gambling. The time has come for us to acknowledge this fact and leave the decision to gamble in the hands of our people. We often hear that the people of this state should be allowed to make their own decisions and choices, and this debate is no different. If people wish to spend their money in this way, that is their option and the state should not be telling them otherwise. Rather our job is to ensure that any gaming that exists in our state is conducted legally. My support for this legislation is also rooted in my commitment to improving education in our state. If you believe in education as strongly as I do, you review every option that has the potential to increase funding in our school systems. Since it is apparent that none of the measures that I have suggested in this session to achieve this goal have or will pass, I am supporting this measure in the hope that the revenue that it will generate will be used to improve our schools throughout the state. Specifically, this bill will return almost $2 million to Nashua schools. Money that can be used to improve the education we provide to our children and stem the increase in property taxes fostered by the cost of delivering this most essential local service. With video poker, we have been presented finally with a means to fully fund Foundation Aid. This is an opportunity that I cannot pass up. I urge you to avail the state this opportunity. And I urge you to support the committee's amendment of ought to pass with amendment.

SENATOR MCLANE: I am not going to lecture. I have been on a 23 - 1 vote in this Senate before, it was moose hunting and I got attacked by a moose that weekend. I know that there is no sense in talking to you. I have an incredible article here about how Nova Scotia stopped video gambling because of the devastating social cost. I passed it out to my Senate

Ways and Means committee and I watched very carefully, not a soul read it. They didn't want to read it. So I am not going to lecture. I am just going to say that I think that you are wrong.

SENATOR BALDIZAR: Senator McLane, it won't be 23 to 1, it will be 22 to 2 and I will tell you why. I, too, care about education and the educational needs of our children, particularly in the communities that I represent, one of them being Nashua which doesn't receive Foundation Aid money currently. I have thought long and hard about this because I know what it will bring to my community, what it will bring to Hollis and some of the other communities that I represent. But I was also at a conference two weeks ago in Manchester and C. Everett Koop was the keynote speaker as were two people from the Koop Institute. The conference was "Success by Six". It talked about the educational and health success of our children by the age of six. I thought, this is so hypercritical of a state that doesn't even have statewide kindergarten or support statewide kindergarten. I thought that that was somewhat hypocritical. I also feel that we had a discussion here that talked about alcohol a couple of weeks ago and how it impairs one's judgement. And when we want to combine gambling at the racetracks with alcohol, I don't think that we are getting people who are using good judgement. I will do anything to support funding our schools, but I don't think that this is the right approach to it, this is the right message to send that we care about education, that we care about families, that we care about children in the state of New Hampshire, I am not comfortable with it.

Amendment adopted.

Ordered to third reading.

Senators Cohen, Colantuono, McLane, Podles, Roberge, Wheeler in opposition to SB 162.

SB 163-FN-L , an act requiring a balanced state budget and relative to the return of general fund surpluses to the cities and towns. Ways and Means committee. Re-refer to committee. Senator Lovejoy for the committee.

SENATOR LOVEJOY: Very quickly, this is a bill for the attempt to study our state funding of our budget, our state budget. When I presented it to the committee I asked them if they would be good enough to give us a year to study that, and they concurred. I am greatful to them for that and we now present it to the full Senate. Thank you.

Committee report of re-referred is adopted.

SB 170-FN-A-L, an act relative to the distribution of meals and rooms tax revenue. Ways and Means committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: SB 170 changes the way revenues from the Meals and Rooms tax is distributed to the cities and towns. Over many years the formula, gradually over many years the formula returns to the revenue distribution of 60 percent for the state and 40 percent for the cities and towns. This will be accomplished by giving the cities and towns 75 percent of any increase in revenues and the state. The remainder of that that has been collected over the previous year. If there is no increase over the previous year, everything stays the same, that is why we call it a gradual increase. The bill does not change the amount distributed now to the state, but allows the cities and the towns the share in any growth over the previous years. The increase in the growth over the previous years is

added to what has been distributed the previous years. So it isn't the case where you get it appropriated this year but not the next year. It stays with you as long as there is an increase in the growth. I think that it is one of those good taxes that certainly would help the property taxes, because it is a growth tax and not an occasional one. We move ought to pass.

Adopted.

Ordered to third reading.

SB 206-FN-A-L, an act imposing a supplemental tobacco tax and beer and liquor tax to fund a mandatory kindergarten program. Ways and Means committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2380B

Amendment to SB 206-FN-A-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT
imposing a supplemental tobacco tax to fund
a mandatory kindergarten program.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose.

I. The general court finds that the state has an obligation to educate its citizens. As far back as 1795, Governor George Clinton of New York complained that education was "confined to the children of the opulent" and urged state aid to common schools.

II. Human intelligence develops most rapidly in early childhood. The human newborn has a number of adaptive reflexes, including grasping, rooting, sucking and Moro reflexes. Newborns show immediate evidence of learning and appreciating the consequences of their actions. It is estimated that 50 percent of adult intelligence is developed by age 4 and 80 percent of adult intelligence is developed by age 8.

III. Child psychologist Jean Piaget theorized that intellectual growth occurs through a combination of assimilation and accommodation. In addition, intelligence reflects the combined effects of both heredity and environment on development of intellectual abilities.

IV. Therefore, the general court finds it to be of paramount importance to the state and its citizens to begin education at the kindergarten level.

2 New Subparagraph; Kindergarten Fund. Amend RSA 6:12, I by inserting after subparagraph (zz) the following new subparagraph:

(aaa) Moneys derived from the supplemental tax under RSA 78:7, II, which shall be credited to the kindergarten fund under RSA 198:34.

3 Supplemental Tobacco Tax; July 1, 1993. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed.

I. A tax upon the retail consumer is hereby imposed at the rate of 25 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state.

II. In addition, a supplemental tax is imposed upon the retail consumer at the rate of $.05 for each package containing 20 ciga-

rettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state, for the purposes of funding kindergarten pursuant to RSA 198:34 - 198:36. Taxes collected under this paragraph shall be deposited by the state treasurer in the kindergarten fund established in RSA 198:34.

III. The payment of the [tax] ***taxes under paragraphs I and II*** shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

4 Supplemental Tobacco Tax; January 1, 1994. Amend RSA 78:7, II to read as follows:

II. In addition, a supplemental tax is imposed upon the retail consumer at the rate of [$.05] ***$.10*** for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state, for the purposes of funding kindergarten pursuant to RSA 198:34 - 198:36. Taxes collected under this paragraph shall be deposited by the state treasurer in the kindergarten fund established in RSA 198:34.

5 New Subdivision; Kindergarten. Amend RSA 198 by inserting after section 33 the following new subdivision:

Kindergarten

198:34 Kindergarten Fund Established. The state treasurer shall establish a kindergarten fund in the treasury. The state treasurer shall deposit into this fund the full amount of the taxes collected under RSA 78:7, II. The fund shall be nonlapsing and continually appropriated for the purpose of funding a state-wide kindergarten program.

198:35 Distribution of the Kindergarten Fund. On or before June 30, 1994 and each year thereafter, the department of education shall prepare a budget estimating the costs for kindergarten for the fiscal year next following. Beginning on July 1, 1994, the moneys in the fund established under RSA 198:34 shall be distributed to the school districts in 3 equal payments on July 1, November 1, and March 1, of each year. Distributions shall be made on an equal basis, based on the average daily membership of kindergarten-aged pupils resident in each district. If there are insufficient funds in the kindergarten fund to fully fund the department's budget in any fiscal year, the deficiency shall be made up from undesignated general fund revenues.

198:36 Authority Commissioner; Rulemaking. The commissioner of the department of education shall:

I. Administer the fund established in RSA 198:34.

II. Establish a state-wide program for kindergarten in time for the 1994-1995 school year.

III. Adopt rules under RSA 541-A necessary to the proper administration of this subdivision.

6 Effective Date.

I. Section 4 of this act shall take effect January 1, 1994.

II. The remainder of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill imposes a supplemental $.05 tobacco tax as of July 1, 1993, to fund a mandatory kindergarten program. The supplemental tax is increased to $.10 on January 1, 1994. If there is a deficiency in the tax

revenues required to fully fund the kindergarten program, the shortfall is to be made up from general fund revenues.

Standards for the kindergarten program shall be established by the commissioner of the department of education.

SENATOR HOLLINGWORTH: I defer to Senator McLane.

SENATOR MCLANE: Thank you. I like you guys and I am always trying to educate you, so if I can pass out these sheets of paper. There is a reason for this bill and it is that Senator Carol Lamirande from the north country knows as well as Senator Baldizar and others that New Hampshire needs kindergartens. That it is a social disgrace that half of the schools in this state have no kindergartens when every other state in the union mandates it. And so for years because of article 28-A which says that you can mandate anything without paying for it, New Hampshire has searched for a simple way to pay for what we ought to do. Cigarettes is one of the ways. If you are so worried about your tiny grocery stores on the borders, rather than the kids of the state of New Hampshire, then you are free to turn down a bill for cigarette tax. Massachusetts has just gone to 56 cents for cigarettes, Vermont has a 20 percent increase that is part of the universal health bill that may come next year and the Governor who is a doctor is strongly in support. But here we are the beer, butts, booze, beds, bellies, bets state - and we are going to leave our butts to be cheaper and cheaper so that kids can smoke more and more of them. That is the bill. That is the choice. I would defer to Senator Lamirande who wishes to talk on kindergarten. Then after she is finished you can do what you want to do.

SENATOR HOLLINGWORTH: Senator McLane, I know that you attended the Success by Six and you heard Doctor Koop the expert health official of the state. And I think that what I heard him say was, "cigarette smoking was the number one cause of death in the United States and that it was the number one preventive in death in the country", is that not what I heard or what?

SENATOR MCLANE: I think that it is on the third page of this handout that I gave from the Cancer Society. But Doctor Koop was absolutely adamant, that liquor and cigarettes are the two worst things that happened to our kids.

SENATOR HOLLINGWORTH: Senator McLane, isn't it also true that they said that, "every single day that 3,000 teenagers begin smoking and that by the time that they reach 18 years of age, 90 percent of them were addicted to tobacco"?

SENATOR MCLANE: The other figure that they had beside that is for every penny that you put up a cigarette tax you stop at least one percent of those teenagers from smoking, because teenagers more than any other age group are price sensitive, and every time you put the price up, some teenager suddenly gets some brains.

SENATOR HOLLINGWORTH: Senator McLane, in the handout that we saw today, we saw that the people were saying that there sales on cigarettes had gone up, I believe that it was 12 percent, oh here it is here, "retail sales are up 12.16 percent over the last year". Isn't is so, wouldn't you say, Senator McLane, that bad news for some people if this tax passed is good news for others because less smoking means less health costs to the state of New Hampshire?

SENATOR MCLANE: The New Hampshire Medical Society is really the one, Carol and I combined our bills about kindergarten and they were really the ones that said that, "they can prove for every bloody dollar that you bring in you are paying it out in health care costs", and I believe them.

Recess.

Out of recess.

SENATOR LAMIRANDE: Mr. President and members of the Senate, New Hampshire is the only state in the nation that does not guarantee every child the right to attend kindergarten. Only 60 percent of the state school districts offer kindergarten and fewer, not more, are offering kindergarten every year. In New Hampshire we are falling farther behind in making sure that every child gets a fair start. Even though a task force appointed by Governor Gregg, recently noted that, "access to preschool can cut the likelihood of disadvantaged youngsters dropping out of high school by as much as 30 percent". Even though every study ever done shows kindergarten helps kids and saves towns and the state money in the long run, and even though we realize that our people are our greatest resource, and we can't attract economic growth unless we have a highly skilled workforce. Not surprisingly, nearly every property rich school district in New Hampshire provides public kindergarten. And most of the truly property poor towns, do too, largely because they receive large chunks of state aid. About one third of all families in towns that are lacking public kindergarten can not afford to send their children to private preschool. Depriving a child, particularly one coming to first grade from an already impoverished home, or deprived environment, greatly increases the chances of failure throughout life. Children who have been to kindergarten have higher achievement scores, drop out less, have higher I. Q. scores and are far less likely to wind up on special education. But there are long-term savings as well. The cost of kindergarten by attacking cigarettes would be approximately one penny per cigarette; frankly, I think those kids are worth it. I find it hard to believe that the majority of Senators choose to ignore the cry of your children and your grand children and choose instead to vote in favor of profit and selfishness. We are a nation that has the most people incarcerated and yet we have as many people committing crimes out on the streets. Education at an early age has been proven to be what is needed to deter crime and high school dropouts, yet New Hampshire is the only state that does not mandate kindergarten. I would point out that over 40 percent of our five year olds do not have, nor can they afford, kindergarten. The same areas that you are seeing that do not have kindergarten, have the highest majority of dropouts, high school dropouts. They eventually end up living off of the very state, New Hampshire, that refuses to mandate kindergarten. It ends up costing New Hampshire more in the long run. Our nation is falling behind. Our state is falling behind. All contributed to a lack of an early and continuous education. We have seen and we are in a deep economic, global recession. Partly due to our lack of thinking. We must become a nation that thinks for a living and you don't start this late in life, you start it early in life. We have an obligation to educate and give every advantage to the children of New Hampshire. That same obligation every other state in the nation already gives to their children and grandchildren. I would be lying if I said that I would agree with the motion that will be made. The decision is just another step backwards. And every step backwards will become more and more difficult to regain the longer

that we wait. The lack of a mandated kindergarten and our lack of responsibility to our children and to our grandchildren is not something that New Hampshire, and we as legislators who have the right and the power to do something about it, should be proud of. I would hope that this body of educated, well informed, and certainly a lot more up-to-date than I am as far as politics is concerned, would consider the children before they consider the money that can be gained or the loss of it. I thank you for listening.

Senator W. King moved to have SB 206-FN-A-L move an act imposing a supplemental tobacco tax and beer and liquor tax to fund a mandatory kindergarten program, laid on the table.

Adopted.

LAID ON THE TABLE

SB 206-FN-A-L, move an act imposing a supplemental tobacco tax and beer and liquor tax to fund a mandatory kindergarten program.

Senator Shaheen in opposition of tabling motion on SB 206.

SB 213-FN-A, an act relative to advance reservations on rooms. Ways and Means committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: I move the bill ought to pass.

Ordered to third reading.

SB 222-FN-A-L, an act relative to property tax relief. Ways and Means committee. Ought to Pass with Amendment. Senator Lovejoy for the committee.

2338B

Amendment to SB 222-FN-A-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Property Tax Relief Fund. There shall be established in the treasury a fund of limited duration to be known as the property tax relief fund. Notwithstanding RSA 9:13-e, V, any excess which would have been transferred to the general fund surplus account under such paragraph for the biennium ending June 30, 1993, shall be deposited in the property tax relief fund. The property tax relief fund shall be administered by the department of revenue administration. After the distributions provided for in this act, any money remaining in the fund shall be deposited in the general fund surplus account pursuant to RSA 9:13-e, V.

2 Distributions From Property Tax Relief Fund.

I. Any town, city or school district which meets the requirements of RSA 21-J:34, II and IV and whose operating budget for the 1994 calendar year or 1995 optional fiscal year does not exceed the operating budget of the 1993 calendar year or 1994 optional fiscal year shall be entitled to a distribution from the property tax relief fund on or before December 31, 1994.

II. A town, city, or school district's distribution under paragraph I shall be determined by adding the operating budgets of all eligible towns, cities, and school districts for the 1994 calendar year and the 1995 optional fiscal year and determining the percentage of that total which is attributable to the town, city, or school district in question. The city, town, or school district shall be entitled to that percentage of the moneys in the

property tax relief fund attributable to it which shall not exceed 25 percent of the city, town or school district's operating budget. The amount so determined shall be applied against the amount to be raised by taxation for the eligible town, city, or school districts in order to reduce the property tax rate for the year in which the distribution is made.

III. For the purposes of this act, "operating budget" shall include total funds appropriated less capital project appropriations. The term "operating budget" shall not include any appropriations for new or expanded services if the city, town, or school district can demonstrate to the satisfaction of the department of revenue administration that such new or expanded services are fully funded from sources other than the city, town, or school district taxpayers.

IV. No city, town, or school district shall make supplemental appropriations in the fiscal year or optional fiscal year in which a distribution under this act is made. If a city, town, of school district makes a supplemental appropriation or spends more than its operating budget in a year for which a distribution has been made, then the city, town, or school district shall repay to the state the amount received as a distribution.

V. Any moneys received from a city, town, or school district under paragraph IV shall be deposited in the general fund surplus account.

3 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill establishes a fund into which any excess in the revenue stabilization reserve account would be deposited for the biennium ending June 30, 1993. The department of revenue administration shall administer the fund from which distributions will be made to municipalities and school districts whose operating budget for the 1994 calendar year or 1995 optional fiscal year does not exceed the operating budget for the prior fiscal or optional fiscal year.

The bill requires that any funds remaining in the property tax relief fund after distribution each year be deposited in the general fund surplus account.

SENATOR LOVEJOY: Mr. President and members of the Senate, this is one of the three bills that Senator McLane referred to at the beginning of our session or the beginning of the reports. This is one of the two that came out with the recommendation of ought to pass with amendment. This bill provides for the surplus of the state budget, to first fully fund the rainy day fund and then it will provide property tax relief for one year for cities and towns. We move ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 228-FN-A, an act relative to the rate of interest on overpayments and delinquencies on taxes administered by the department of revenue administration. Ways and Means committee. Inexpedient to Legislate. Senator McLane for the committee.

SUBSTITUTE MOTION

Senator McLane moved to substitute refer for inexpedient to legislate on SB 228-FN-A an act relative to the rate of interest on overpayments and delinquencies on taxes administered by the Department of Revenue Administration.

SENATOR MCLANE: This bill concerns the interest rates charged by the state of New Hampshire for delinquent taxes and overpayment of taxes. Under current law, the rate is 15 percent for delinquent taxes and 10 percent that the state would return on overpayment of taxes. Obviously that really isn't fair. The law calls for the bill to go back to the same rate as the Internal Revenue Code, which is two percent and three percent. But, the bottom line is that it would cost the state of New Hampshire $2.5 million. It is the committee's intention that, sure we know that it is unfair, and we are sorry. But until there is some change in the tax structure that would afford $2.5 million with fairness. We looked at some alternatives, going halfway, trying to work it out. We would like an opportunity to further study those alternatives.

Adopted.

Motion to re-refer is adopted.

SB 234-FN-A-LOCAL, an act relative to the return of revenue to cities and towns. Ways and Means committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: Out of the three bills dealing with return of revenues to cities and towns, we have sent two over to the House. They're obviously going to have to help us make some very hard choices. At this point it did not seem that we wanted to kill either bill, although we really can't envision the final outcome. And so this bill which would return all of the surplus to cities and towns, the other bill would fund the rainy day fund first, and then return money only to those towns that did not raise their budgets. So we are going to send some choices over to the House. We have a long way to go between now and the end of May. Both of these bills should go forward, you have already passed one.

Adopted.

Ordered to third reading.

SB 236-FN-A, an act allowing a tax credit against the Business Profits Tax for certain businesses. Ways and Means committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: I would like to ask for a one minute recess.

Recess.

Out of recess.

SENATOR MCLANE: I rise in support of one of the bills that probably should have gone to the Economic Development committee, but it was interesting to have it come over to Ways and Means. This is the one section of the economic package that was not addressed last year. The capital investment, the job creation, and the community development finance were included in the tax structure last year and have amounted to less than $5 million in tax credits. This bill is the other part of the package. I would quote from Professor Porter that spoke to us at the Economic Summit, "better to encourage our New Hampshire businesses than to reward savior businesses from out of state". So for that reason, I believe that the Ways and Means committee would like to send over this bill that calls for tax credit for research and development.

SENATOR COLANTUONO: Senator McLane, is this consistent with what we did last year in terms of the structure? I seem to recall that we changed the credits to exemptions or deductions last year? I am sorry, I just can't remember.

SENATOR MCLANE: I guess I would be more comfortable if you asked those questions of Senator King because he has my minutes.

SENATOR W. KING: Would you just repeat your question, Senator Colantuono?

SENATOR COLANTUONO: Yes. Last year, didn't we start out with credits, but then changed to deductions or exemptions for these?

SENATOR W. KING: No. I am going to say that about three years ago we started talking about the whole issue of providing some kind of an incentives to businesses for capital investment, research and development, all of those things. During the course of the first year, it became very clear to the members of the Economic Development committee that it was far better to reward businesses based on performance; in other words, based on something specific that they did than to just give them money and hope that something would get done. That is why during the last session we enacted various tax credits that require them to produce a job before there was a credit given. It required them to do certain things. This is an extension of that, where something viable has to be produced or some thing has to be produced before a credit is given. In this case, it is resource and development work that has to be done before the credit is provided.

SENATOR COLANTUONO: But all of the bills last year were credits not deductions?

SENATOR W. KING: They were structured in similar ways. This is a deduction against the Business Profits Tax that is in credit for the research and development that is done.

Recess.

Out of recess.

SENATOR COLANTUONO: So for clarification, is this intended to be a credit or a deduction?

SENATOR W. KING: Senator Colantuono, when I used the word, credit, I was using it in a broader sense to describe the process of awarding some kind of financial incentive to a business for actually producing something as opposed to merely giving them money and hoping that they will produce something. This is a credit against the Business Profits Tax that has a minimum impact listed in it. I believe that it is five percent. It can't be any more than five percent of the liability of the Business Profits Tax.

SENATOR COLANTUONO: I oppose the various credits against the BPT last session and I guess I am in opposition to this one, too, for the same principle; and that is that tax credits against a state's Business Profits Tax are very different from credits against the Federal Corporate Tax which is 35 percent. When you give credits against those types of taxes that are significant in business planning, there is going to be a big impact. I believe that we have already had a report out by the DRA assessing the credits that we passed last session. And the basic bottom line to that is that the credits really didn't do much, they didn't have much effect. My fear has always been that the credits that we are giving against our BPT, basically are only draining the state of revenue, because the businesses who are doing these various things, like hiring people, investing in research and development are going to be doing them anyway because they are growing, prospering companies and all that you are doing is rewarding the companies who are doing well anyway and would do those things anyway. I think that the bottom line is that we are just giving our

tax revenue away. A BPT don't forget, is deductible under the Federal Corporate Tax. So it really isn't giving the company that much and I think that that is why the DRA survey of this proved that they weren't used very often. But just looking at this bill for the first time since I am not on the committee, I have a further problem with the scarcity of any definition in here. This bill simply says that a company gets 15 percent investment for any, any research and development. It has no definition of what that is; you could be going to the library and researching some intellectual issue, it could be . . . developing what, it doesn't say that in the bill. So for any undefined research and development they can be getting this very large credit. Passing it in such ambiguous form, I think, is really a mistake and I would urge the body not to support it.

SENATOR W. KING: I will be very brief since Senator Colantuono has already asked me what I think are the pertinent questions. But I want to take the opportunity since he brought up the DRA report to respond strictly on that issue. The Department of Revenue Administration has suggested that we continue the process that the Pease Development Authority has utilized thus far as Pease; essentially, throwing money at individual companies and hoping that that will spur economic growth in the state of New Hampshire. I believe that the tack that we have taken in the Senate is the proper tack. That is that we target money very conservatively and very specifically to businesses who actually produce a result, who produce a job, who do research and development work, who make capital expenditures that increase their competitiveness. That is the way that the state of New Hampshire ought to be spending its limited resources to help spur economic growth to create high waves, high value added jobs, not by throwing money at saviors from out side of the state of New Hampshire or frankly, at throwing money at specific businesses that we think we can better. Let us let the private sector worry about the competitiveness of their businesses and let us provide the incentives necessary so that they can produce jobs and they can invest in themselves.

SENATOR BARNES: Senator King, I agree with a lot of what you just said, but I didn't hear you address the concern, maybe I missed it, that Senator Colantuono brought up about the taxes out there. The credit being there for those items that possibly they aren't spelled out properly in the bill. Do you feel that they are properly spelled out in the bill?

SENATOR W. KING: Senator Barnes, I understand that. I think that it was the intent that when we would be governed as we are in other legislation by the federal definition for research development; however, I would not at all object to a motion to lay this on the table and we will get that straightened out before the day is over.

Senator Blaisdell moved to have SB 236-FN-A an act allowing a tax credit against the Business Profits Tax for certain businesses, laid on the table.

Adopted.

LAID ON THE TABLE

SB 236-FN-A, an act allowing a tax credit against the Business Profits Tax for certain businesses.

HB 191, an act establishing a committee to study physician liability with regard to charitable medical care. Judiciary committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: I would like to ask the Senate to accept the committee report of inexpedient to legislate. HB 191 would establish a study committee to look into the physician liability for charitable medical care. The main focus of the study would have been to look at the limited immunity for physicians who provided charitable care. The committee felt that the physicians who volunteered their services are already covered under the good samaritan act; therefore, the committee asks inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 208, an act relative to protecting personal privacy. Judiciary committee. Inexpedient to Legislate. Senator Baldizar for the committee

SENATOR BALDIZAR: HB 208 is an attempt to protect personal privacy by limiting the use of social security numbers. Although the concept of the bill is admirable, the committee felt that the text of the bill does not do what it intends to do. The bill limits who can ask for social security numbers and when an individual refuses to divulge their social security number, the services would still have to be accessible to them. Testimony was heard in the committee that by not having access to social security numbers, banks would not be able to ascertain whether a person applying for a loan is credit worthy, blood banks would not be able to accept blood from individuals, and if accepted, could not guarantee that the blood received was untainted. While protecting personal privacy is important, keeping personal information accurate is just as important. While the use of social security numbers as identification numbers is not the intent of social security numbers, and any other system would be just as invasive to our personal privacy and would not be as accurate. I don't think that anyone in the hearing that we had on this spoke in favor of the bill other than the sponsor. All of our testimony was against the bill.

Committee report of inexpedient to legislate is adopted.

HB 578, an act repealing the requirement that grandparents pay all costs arising out of petitions for visitation with their grandchildren. Judiciary committee. Inexpedient to Legislate. Senator Podles for the committee.

SENATOR PODLES: Mr. President, HB 578 is identical to SB 221-FN which repealed the requirement that grandparents pay all cost for petitions for visitation. SB 221 passed both bodies and there is no longer any need for HB 578. The committee recommends inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 86-FN-A, an act requiring a performance audit of the department of resources and economic development and of the office of state planning and making an appropriation therefor. Finance Executive Committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: The committee report of inexpedient to legislate does not reflect how we feel about this specific bill. It just happens that in Economic Development right now there is a similar House bill and we are going to utilize that and make some changes that reflect some of the things that we heard at the Summit. Ron Rioux suggested at the Summit that we ought to look at ways to consolidate all of the different agencies that provide financing. We ought to put that into this law so that whoever does the consulting work to look at all of the economic development agencies and programs looks at that possibility as well. This is inexpedient to legislate, but the subject matter will come before us shortly afterwards.

Committee report of inexpedient to legislate is adopted.

SB 87, an act relative to a capital investment, venture capital, capital access and the Business Finance Authority capital formation. Finance Executive committee. Ought to Pass with Amendment. Senator W. King for the committee.

2391B

Amendment to SB 87

Amend the title of the bill by replacing it with the following:

AN ACT

relative to capital investment, venture capital, capital access and the business finance authority and capital formation; and relative to ambulatory care clinics.

Amend the bill by replacing section 19 with the following:

19 Ambulatory Care Clinics Added to Definition of "Participating Health Care Institution." Amend RSA 195-D:3, VIII to read as follows:

VIII. "Participating health care institution" means a hospital, [or] nursing home, [or] health maintenance organization [or], home health care provider, ***or ambulatory care clinic*** which, pursuant to the provisions of this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of bonds or other obligations or of a mortgage or of advances as provided in and permitted by this chapter.

20 New Paragraph; Definition of "Ambulatory Care Clinic." Amend RSA 195-D:3 by inserting after paragraph XVII the following new paragraph:

XVII. "Ambulatory care clinic" means any nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended, and which is engaged in the operation of, or formed for the purpose of operating, an ambulatory health care facility in which health care services are offered to the public on an outpatient basis by or under the direction of physicians and licensed health care professionals.

21 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This Bill:

(1) Adopts a statement of intent relative to encouraging capital investment.

(2) Creates incentives for businesses to invest in new enterprises by allowing a deduction from income for purposes of the Business Profits Tax equal to the amount of contributions to a qualifying venture capital fund.

(3) Clarifies the duties and activities of the business finance authority. Specifically, the bill makes it clear that the authority may make loans and that the state guarantee includes collection expenses and costs related to any loan. The bill also increases the ceiling on state guaranteed loans from $20,000,000 to $40,000,000 and inserts into unclassified salary groups 3 positions in the business finance authority.

(4) Establishes the commercial real estate support program to allow the business finance authority to extend credit for commercial real estate ventures.

(5) Allows ambulatory care clinics to be participating institutions under the law relative to the New Hampshire higher educational and health facilities authority, and adds ambulatory care clinics to the facilities covered under the laws relative to the higher educational building corporation.

SENATOR W. KING: This bill is pretty much the same as it was passed out of the Senate Economic Development committee with the exception of a proviso that allows ambulatory care clinics to access the bonding authority of the Higher Education and Health Care Financing Agency.

Amendment adopted.

Ordered to third reading.

SB 146-FN-A, an act regarding the use of medicaid enhancement funds. Finance Executive committee. Re-refer to committee. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President, the Finance Executive committee voted SB 146 to be re-referred. The spirit of the bill will be reflected in the budget.

Committee report of re-refer is adopted.

SB 158, an act relative to economic security, establishing a housing security guarantee program and continually appropriating a special fund, creating a bi-state commission for economic security and allowing the housing finance authority to issue guarantees of certain home mortgage loans to help provide housing security. Finance Executive committee. Ought to Pass with Amendment. Senator W. King for the committee.

2385B

Amendment to SB 158

Amend the bill by replacing section 2 with the following:

2 New Subdivision; Housing Security Guarantee Program. Amend RSA 126-A by inserting after section 89 the following new subdivision:

Housing Security Guarantee Program

126-A:90 Declaration of Purpose and Findings Regarding Housing Security. The legislature finds that the inability of individual citizens to amass sufficient funds for housing security deposits contributes significantly to the problem of homelessness in the state of New Hampshire; that a program of security deposit guarantees which is coordinated with other programs that address rental housing security could assist in alleviating that problem; that it is possible, and desirable, to structure and implement such a program without threatening the fiscal health of the state; that the financial health of the state shall indeed be served by enabling private housing opportunities; and that such a program is necessary for the public good, health, welfare, and stability of the state.

126-A:91 Program Established. There is hereby established a housing security guarantee program.

126-A:92 Definitions. In this subdivision:

I. "Division" means the division of mental health and developmental services, department of health and human services.

II. "Guarantee certificate" means a document issued under this subdivision that pledges the full faith and credit of the state of New Hampshire for the payment of the security deposit it guarantees.

III. "Landlord" means a person and such person's employees, officers, or agents who rent or lease to another person a housing unit, including single family homes, apartments, mobile homes, prefabricated homes, or

other real or personal property used as a dwelling for one or more persons.

IV. "Local administrator" means the director, governing board, president or other official with organizational authority to direct the day-to-day operations of a local housing security provider as that term is defined in paragraph V.

V. "Local housing security provider" means a local governmental or private non-profit agency or organization which contracts with the division to administer and provide assistance to tenants in obtaining security deposit funding.

VI. "Qualified tenant" means a person whose total household income does not exceed the amount defined as "very low income," as adjusted for household size and region, as is defined and published from time to time by the United States Department of Housing and Urban Development.

VII. "Qualifying security deposit amount" means an adjustable amount consistent with local market conditions as determined by the local administrator and reported to the division; such amount not to exceed one month's rental fee for the subject housing unit.

VIII. "Security deposit" means any funds in excess of monthly rent which are required to be transferred from a tenant to a landlord for any purpose.

IX. "Security deposit guarantee application" means an application for a guarantee certificate made in accordance with RSA 126-A:94.

X. "Subject housing unit" means a specific dwelling unit, single family home, apartment, mobile home, prefabricated home, or other real or personal property used as a dwelling for one or more persons that satisfies legal health and safety standards and is specifically designated on an individual security deposit guarantee application.

126-A:93 Allocation and Designation of Guarantee Capacity. Upon application from a local housing security provider in such form as the division may require, the division may allocate and commit itself to issue, and the local housing security provider may be authorized to process applications and provide the ancillary services connected with the issuance of, guarantee certificates for the purposes of this subdivision. In no event shall the aggregate guarantee amounts allocated by the division to all local housing security providers exceed $1,000,000. The division shall allocate the aggregate guarantee certificate capacity authorized by this section in a manner which takes into account both housing needs and geographic diversity.

126-A:94 Application for and Issuance of Guarantee Certificates.

I. Applications for individual guarantee certificates shall be made jointly by a landlord and qualified tenant to a local housing security provider for the geographic region in which a subject housing unit is located.

II. Applications for guarantee certificates shall include:

(a) Name, address, and telephone number of the landlord.

(b) Address of the subject housing unit.

(c) Name of the qualified tenant.

(d) The dollar amount of the requested security deposit.

(e) The dollar amount of the qualified tenant's income.

(f) The dollar amount of monthly rent to be charged for the subject housing unit.

(g) A copy of the subject lease or rental agreement, if any, governing the tenancy. If no written lease agreement is provided, program participants shall comply with the terms of form lease agreements approved by the division.

(h) Sworn statements from both the landlord and the qualified tenant describing their prior participations in the security deposit guarantee program established under this subdivision.

(i) The landlord's written agreement to accept a guarantee certificate issued in accordance with this subdivision in lieu of any other security deposit.

(j) The qualified tenant's written agreement to make the periodic payments required by RSA 126-A:96.

III. Review of applications and decisions on such applications shall be performed and made by a local housing security provider and completed within 5 business days of the submission of a completed application. When a local housing security provider approves an application, it shall notify the division of such approval.

IV. Upon receipt of a notice of approval by a local housing security provider of an application, the division shall issue within 5 business days to the landlord a certificate of guarantee with a face value equal to the qualifying security deposit amount and issue to the qualified tenant a coupon book for periodic payments as required under RSA 126-A:96.

126-A:95 Delegation of Local Administration. The division may enter into written agreements or contracts with one or more agencies or organizations to provide for the administration and application of the guarantee program established under this subdivision. Such agreements shall specifically require the provision of coordinated services necessary to assure the success of this program, including such services as financial counseling, referrals to assistance agencies and organizations, and performance or payment monitoring and adjustments.

126-A:96 Periodic Payment Requirement. Beginning with the first month of tenancy and each month thereafter, a qualified tenant participating in this program shall make a monthly payment to the division of a fractional amount of the qualifying security deposit amount, which amount is determined by and adjustable with the approval of the local housing security provider. Notice of all adjustments to required payment amounts shall be forwarded to the division by the local housing security provider. The payments shall be made until the full amount of the security deposit guarantee has been received by the division. Amounts received by the division shall be held in a fund, known as the security deposit fund, established in RSA 126-A:102 for this purpose. In no event shall a qualified tenant's failure to make the periodic payments required by this section create a default under any lease or rental agreement for a subject housing unit. All amounts received by the division pursuant to RSA 126-A:96 shall not be a "security deposit" as defined by RSA 540-A:5, II.

126-A:97 Redemption of Certificates in Event of Default.

I. In the event a default occurs which under the lease or rental agreement entitles the landlord to claim and retain some or all of the security deposit or a landlord completes eviction proceedings in accordance with RSA 540, in order to effect a redemption of a guarantee certificate issued under this subdivision, the landlord shall within 30 days of such default event or eviction submit to the local housing security provider:

(a) A certification of default and entitlement to some or all of the security deposit executed by the landlord under penalties of perjury, or a copy of the landlord's notice to quit prepared and served in accordance with RSA 540:3, 540:5, and 540:6, as applicable.

(b) A copy of the writ of possession, if any, and a certification that the subject housing unit has been vacated.

(c) A written request for redemption of the certificate of guarantee, specifying the amount requested and the issue date and number of the certificate.

II. After receipt by the local housing security provider of the materials required under paragraph I, the local housing security provider shall have 30 days to issue a notice of approval, proposed adjustment or rejection, stating with specificity its grounds for such adjustment or refusal. Upon approval of a request for redemption, the local housing security provider shall notify the division of such approval and the division shall have 15 days to redeem the certificate of guarantee.

126-A:98 Tenant's Right to Refund. In the event a tenancy is terminated before all periodic payments have been made to the division and no claim for redemption is brought by the landlord within the period specified, a qualified tenant may claim a refund of all payments made by the tenant and a cancellation of the tenant's written agreement to make any additional payments. The claims shall be brought by tenants within 90 days of the termination of the tenancy. All payment amounts unclaimed at the end of the 90-day period shall be held in a fund for the purpose of making payments upon redemption of guarantee certificates.

126-A:99 Mandatory Redemption of Certificates Without Default. When all periodic payments required by RSA 126-A:96 have been made in full by or on behalf of a qualified tenant participating in the program established under this subdivision, the division shall issue a notice to the qualified tenant and the landlord calling for the mandatory redemption of the guarantee certificate. A participating qualified tenant and landlord shall comply with such notice and submit the certificate for redemption, and the division shall pay to the landlord the amount stated in the certificate. Upon receipt of such payment, the landlord shall hold such payment as a security deposit pursuant to law and terms of the lease or rental agreement.

126-A:100 Guarantee; Credit of State Pledged. The full faith and credit of the state is pledged to support and redeem the certificates of guarantee issued by the division. In furtherance of that pledge, the state treasurer shall advance to the division from available cash in the treasury or from proceeds of bonds or notes of the state issued pursuant to this subdivision, such amounts as may be requested from time to time by the division to enable it to perform all guarantee obligations punctually and in accordance with their terms. The division shall request such advances from time to time as additional amounts are required for such purpose. The treasurer shall, subject to the approval of the governor and council, issue full faith and credit bonds of the state from time to time in amounts equal to advances made under this subdivision, and borrow in anticipation of the proceeds of such bonds. The obligation of the state under the provision of this section shall at no time exceed the amount of $1,000,000. A certificate of guarantee issued by the division in the hands of the original landlord to whom the certificate was issued shall be conclusive evidence of its validity for the purposes of this subdivision, except for fraud. Whenever the division pays to a landlord any sum in discharge of the state's liability as guarantor, except as required by RSA 126-A:99, the division shall be to that extent subrogated to the landlord's right, title and interest in any amounts received pursuant to the lease or rental agreement. Amounts received by the division to discharge the state's guarantee shall be returned to the treasury less any costs incurred in collection.

126-A:101 Rulemaking Authority. The division shall adopt rules, under RSA 541-A, relative to matters as are necessary to carry out the powers and duties of the division under this subdivision.

126-A:102 Fund Established. There is established in the office of the state treasurer a nonlapsing security deposit fund. The fund shall be continually appropriated to the director of the division to be used for the purposes of this subdivision.

AMENDED ANALYSIS

This bill is relative to the economic security of the state's citizens.

Specifically, this bill:

(1) Establishes a program to assist eligible tenants in securing housing by guaranteeing their security deposits. The money loaned for such security deposit is to be paid back in fractional amounts, such amounts to be determined by the appropriate local housing security provider. The program is to be administered by the division of mental health and developmental services, department of health and human services.

(2) Establishes a bi-state commission for economic security. The duty of the commission shall be to examine and evaluate factors affecting the economics of communities on the New Hampshire and Maine sides of the Piscataqua River and to make recommendations for actions to enhance and improve the economic stability of the region.

(3) Establishes a housing security program to assist eligible persons and families in obtaining affordable housing by issuing guarantees for certain home mortgage loans. The program is to be administered by the housing finance authority.

SENATOR W. KING: This bill is the bill that passed out of Economic Development with some housekeeping changes requested by the Housing Finance Authority.

Amendment adopted.

Ordered to third reading.

Senators Colantuono and Wheeler in opposition to SB 158.

SB 159, an act relative to technological development and relative to inventor assistance and making an appropriation therefor. Finance Executive committee. Ought to Pass with Amendment. Senator W. King for the committee.

2376B

Amendment to SB 159

Amend the title of the bill by replacing it with the following:

AN ACT

relative to technological development, relative to inventor assistance and making an appropriation therefor, and relative to a site for the Technology Research Park at the Pease International Tradeport.

Amend the bill by replacing section 6 with the following:

6 Technology Research Park Site. The site for the Technology Research Park at the Pease International Tradeport shall be the 47 acres of land designated in the Pease Development Authority's real estate development plan.

7 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill adopts a policy for the state of New Hampshire to further partnerships between public educational institutions and private commercial enterprises to aid technological development.

This bill establishes an inventor assistance program to provide assistance to inventors. Under this bill, inventors would submit an application with a fee of $100 to the industrial research center at the university of New Hampshire at Durham. If the proposal is accepted, there would be a contract between the center and the inventor authorizing the center to receive a fee not to exceed 10 percent of all royalties from the product for 10 years from the first day after royalties are received by the inventor and establishing that the center will aid in the funding of the product.

The bill establishes a fund to be administered by the administrative head of the industrial research center. The bill makes an appropriation for the startup costs of the program.

The bill offers as an incentive, to in-state manufacturers who produce an inventor's product, a credit against the Business Profits Tax.

The bill also specifies the site for the Technology Research Park at the Pease International Tradeport.

SENATOR W. KING: SB 159 is originally passed out of the Economic Development with the addition of the recodification of a research park site at Pease International Tradeport and an amendment from the Appropriations committee which deals with the issue of how the Inventor Assistance Program is going to be financed.

Amendment adopted.

Ordered to third reading.

Senators Colantuono and Wheeler in opposition to SB 159.

SB 181-FN, an act abolishing the New Hampshire retirement system special reserve account. Finance Executive committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President and members of the Senate, SB 181 came out of the Senate Financing Executive committee as ought to pass. All of the retirement bills were unanimous coming out of the Senate Finance Executive committee. I will explain it if you'd like. It abolishes the special reserve account. When we changed the funding method of the retirement system in the last session, there is no need for this any longer in the provision of the law, so we ask you to pass it.

Adopted.

Ordered to third reading.

SB 192-FN, an act relative to supplemental allowances for retirement system members. Finance Executive committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

1956B

Amendment to SB 192-FN

Amend RSA 100-A:41-a, I as inserted by section 1 of the bill by replacing it with the following:

I. Any member of the New Hampshire retirement system or any of its predecessor systems, after retirement, or any beneficiary of such member who is receiving a monthly allowance, shall be entitled to receive supplemental allowances, which may also be referred to as cost of living

adjustments or COLA's[, if and when enacted by the legislature], ***beginning July 1, 1994, and on every July 1 thereafter. Such supplemental allowances shall be granted by the trustees annually. The amount of such additional allowances shall be dependent upon the sufficiency of funds in the special account created by RSA 100-A:16, II(h), as provided in paragraph II. For the purpose of reaching this determination, the actuary shall look at each member classification component of the special account separately. The amount of the additional allowance shall be determined separately for retired members and beneficiaries of each member classification, and shall be a multiple of 1/4 percent, not in excess of 5 percent, depending on the amount available in each respective component of the special account, or shall be zero if funds in the respective component of the special account are insufficient for a 1 percent additional allowance. To be eligible to receive such an additional allowance the retired member or beneficiary must have been receiving benefits for the previous 12 months prior to the date on which the supplemental allowance is granted.*** Any such supplemental allowance [when granted by the legislature] shall become a permanent addition to the beneficiary's base retirement allowance, and shall be included in the monthly annuity paid to the retired member, or to the member's beneficiary if the member is deceased and the beneficiary is receiving an allowance under RSA 100-A:8, 100-A:9, 100-A:12, 100-A:13 or similar provisions of predecessor systems.

AMENDED ANALYSIS

Beginning on July 1, 1994, this bill changes the way cost of living adjustments (COLA's) are determined and granted for retirees of the New Hampshire retirement system. COLA'S are granted on an annual basis upon a determination by the retirement system board of trustees that sufficient funds exist in the special account to terminally fund the COLA.

The amount of the additional allowance is determined separately for each member classification. The additional allowance shall be a multiple of 1/4 percent, not in excess of 5 percent, or shall be zero if funds in the respective component of the special account are insufficient for a 1 percent additional allowance. A retired member or beneficiary must have been receiving benefits for the previous 12 months prior to the date on which the supplemental allowance is granted.

SENATOR BLAISDELL: Mr. President, this bill establishes a mechanism for an automatic COLA for the retirees of the New Hampshire Retirement System. It is their money and they ought to get it and I hope that you pass it.

SENATOR COLANTUONO: I just want to say for the record, that although there is nothing in the language of the bill, I would hope that the intent here be that the cost of living adjustments not be given in excess of the actual cost of living. I don't think that anyone here intends to do that. I mean you could have a situation where the cost of living goes up one or two percent in a year and because there is enough money in the special account to give them a three or four or even a five percent cost of living increase, I don't think that that should happen and I just wanted to state that for the record.

Amendment adopted.

Ordered to third reading.

SB 196, an act relative to the municipal economic development, establishing a committee to study regional planning and economic development, allowing towns to establish industrial development authorities, relative to bonding for economic development projects, allowing local governments to share tax revenues arising from economic development; and establishing an economic development matching grants program and making an appropriation therefor. Finance Executive committee. Ought to Pass with Amendment. Senator W. King for the committee.

2128B

Amendment to SB 196

Amend paragraphs XII-XV of section 2 of the bill by replacing them with the following:

XII. The director of a regional planning commission, appointed by the Association of Regional Planning Commissions.

XIII. A planner/architect, appointed by the New Hampshire Planners Association.

XIV. A town manager, appointed by the Municipal Management Association of the New Hampshire Municipal Association.

XV. An economic development director, appointed by the New Hampshire Municipal Association.

SENATOR W. KING: This is the same bill that came out of the Economic Development committee with the very simple amendment of taking three positions that are in the study committee and making them generic in nature.

Amendment adopted.

Ordered to third reading.

SB 199-FN-LOCAL, an act relative to eligibility for medical benefits for group II retirement system members. Finance Executive committee. Rereferred to committee. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President, the members of the Senate Finance Executive committee voted unanimously to re-refer this bill. The $22 million to pay for this expanded coverage is not available at this time.

Committee report of re-refer is adopted.

SB 200-FN-LOCAL, an act relative to the payment of medical benefits to certain group II retirement system members. Executive Finance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President, 14 retired members of group II at 20 years of service fell through the cracks in this particular bill. The Senate Finance committee voted unanimously to have this passed and the House has added a similar measure to one of its bills to take care of these people who fell through the cracks, we think that it ought to pass.

Adopted.

Ordered to third reading.

SB 201-FN-L, an act determining how supplemental allowances shall be granted for retirement system members. Executive Finance committee. Inexpedient to Legislate. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President, SB 201, this bill covers the same subject matter as in SB 192 and, therefore, it is not necessary.

Committee report of inexpedient to legislate is adopted.

SB 215-FN, an act providing a cost of living adjustment for group II permanent firemen members of the New Hampshire retirement system. Finance Executive committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

2378B

Amendment to SB 215-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Supplemental Allowance for Group II Permanent Firemen Members. As of July 1, 1993, all group II permanent firemen beneficiaries of the New Hampshire retirement system or of its predecessor systems who retired on or before June 30, 1992, and who are receiving retirement allowances according to RSA 100-A, RSA 102, or RSA 103 shall receive an additional allowance of 4.5 percent. The additional allowance shall become a permanent addition to each beneficiary's base retirement allowance, as provided in RSA 100-A:41-a.

2 Funding of Additional Allowances.

I. The total actuarial cost of providing the additional allowance as provided in section 1 of this act shall be funded from the fire component in the special account created by RSA 100-A:16, II(h), on a terminal basis as of June 30, 1993.

II. If there are insufficient funds in the fire component in the special account created by RSA 100-A:16, II(h) to terminally fund the total actuarial cost of the additional allowance provided in section 1 of this act, such sum as shall be necessary to fund the total actuarial cost of the additional allowance shall be withdrawn from the fire component of the retirement system special reserve account.

3 Funding of Additional Allowances. The total actuarial cost of providing the additional allowance as provided in section 1 of this act shall be funded from the fire component in the special account created by RSA 100-A:16, II(h), on a terminal basis as of June 30, 1993.

4 Contingency. If SB 181-FN, "An act abolishing the New Hampshire retirement system special reserve account," of the 1993 legislative session becomes law, section 3 of this act shall take effect at 12:01 a.m. on June 30, 1993, and section 2 of this act shall not take effect. If SB 181-FN does not become law, section 2 of this act shall take effect on June 30, 1993, and section 3 of this act shall not take effect.

5 Effective Date.

I. Sections 1 and 4 of this act shall take effect June 30, 1993.

II. Sections 2 and 3 of this act shall take effect as provided in section 4 of this act.

AMENDED ANALYSIS

As of July 1, 1993, this bill grants all group II permanent firemen beneficiaries of the New Hampshire retirement system or of its predecessor systems who retired on or before June 30, 1992, a supplemental allowance of 4.5 percent.

The total actuarial cost of providing the additional allowance is funded from the fire component of the retirement system special account on a terminal basis. If there are insufficient funds in the fire component in

the special account to terminally fund the additional allowance, such sum as shall be necessary to fund the additional allowance shall be withdrawn from the fire component of the retirement system special reserve account. However, if the special reserve account is abolished on June 30, 1993, in other legislation, then the additional allowance shall be totally funded from the fire component of the special account.

SENATOR BLAISDELL: Mr. President, having passed SB 181 this bill gives a 4-1/2 percent COLA to retired fire fighters. They have not had a COLA in the last three years. The money is there and it has been documented. The Senate Finance Executive committee recommends ought to pass.

SENATOR BARNES: Can you tell us what kind of money that we are talking about?

SENATOR BLAISDELL: Yes. We are talking about probably . . . well there is a million dollars in the fire fund, plus 2. something other million, about 3.9 million probably something like that.

SENATOR BARNES: I am looking at the fiscal note and it doesn't mention that here. It mentions that they are waiting for some reports to come over.

SENATOR BLAISDELL: We have already received those reports. It is an added fiscal report. We documented this in Finance the other day along with Senator Colantuono and the other members. You will find that it is there, Jack, we wouldn't pass it unless the money was in there.

SENATOR BARNES: Thank you very much.

Amendment adopted.

Ordered to third reading.

SB 29, an act making an appropriation to the Department of Postsecondary Technical Education to support a pilot satellite program in Haverhill to promote north country economic development. Appropriations committee. Inexpedient to Legislate. Senator Disnard for the committee.

SENATOR DISNARD: Mr. President, the Appropriations committee approved this unanimously, inexpedient to legislate, and we request the Senate to accept the report of the committee. The reason is that this is in SB 94.

Committee report of inexpedient to legislate is adopted.

SB 30-FN-A, an act making appropriations for Meals on Wheels and other programs in the Division of Elderly and Adult Services. Appropriations committee. Inexpedient to Legislate. Senator Disnard for the committee.

SENATOR DISNARD: Mr. President, the Appropriations committee unanimously request and approved inexpedient to legislate. We request the Senate approval. The monies are included in the budgets. The Senate is working as a committee with the departments and therefore, we do not need this as a special bill.

Committee report of inexpedient to legislate is adopted.

SB 35-FN-A, an act relative to a fund for organ transplantation and transferring responsibility from vocational rehabilitation to the division of human services and making an appropriation therefor. Appropriations committee. Ought to Pass with Amendment. Senator J. King for the committee.

2366B

Amendment to SB 35-FN-A

Amend the bill by replacing section 2 with the following:

2 Organ Transplant Funding; Appropriation.

I. The organ transplantation program fund, established in RSA 161-H:4 in section 1 of this act, shall begin each new fiscal year with a balance of $360,000. If total funding is not immediately available, the director of the division of human services in consultation with the commissioner of health and human services shall develop a plan to reach the $360,000 goal over a specified period.

II. The sum of $360,000 for the fiscal year ending June 30, 1994, is hereby appropriated to the division of human services, department of health and human services for the purpose of starting the funding of the organ transplantation program fund established in section 1 of this act. This appropriation is in addition to any other funds appropriated to the division of human services. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

SENATOR J. KING: This bill establishes an organ transplant program which will be administered by the Health and Human Services, part of which is being done by the Education Vocational Rehab. It was felt that it should be passed. Both agencies, the Health and Human Services and the Education agreed with this bill. At the Appropriation committee hearing, they agreed with it but reduced the appropriation down from $500,000 to $336,000. The appropriation is the revolving account. We move ought to pass with amendment.

SENATOR COLANTUONO: I am reading the amendment on page 11 that starts with, "shall begin each new fiscal year with a balance of $360,000". Where does that money come from?

SENATOR J. KING: That is appropriation. What is happening now is that the money in the Vocational Rehab is being used from the Catastrophic or Organ Transplant and it shouldn't be there because it is tying up their money and they have about 3,200 cases that they can't get to. So we have sat with both agencies and we agree to transfer it to Health and Human Services. But they needed some money to get it going so that the $336,000 now will be a revolving account. If they don't use any, then that stays there. If they use half of it, then we reimburse them for the other half.

SENATOR COLANTUONO: For further clarification, so this is not new money?

SENATOR J. KING: This is new money.

SENATOR COLANTUONO: Is it in the Governor's budget?

SENATOR J. KING: I don't think so.

SENATOR HOLLINGWORTH: I just wanted to assure Senator Colantuono that this money is paid back by the people who draw from the account when they are able to pay it back and those that are unable to pay, the money would be there from medicaid.

SENATOR LOVEJOY: Senator Hollingworth, from what you are telling us, this would be a one time appropriation because it is a self replenishing fund?

SENATOR HOLLINGWORTH: That is right. The people are supposed to be paying the account back. They are going to need, they said $500,000 that was the original appropriation and we cut it back to $350,000. But the people who draw from the fund are supposed to be able to pay it back.

SENATOR LOVEJOY: I have a question of Senator J. King, I guess, because he said no.

SENATOR J. KING: The fund is there because these are people who can't afford to do the operation and therefore, what they have done is in 1984 it started. They went to the Education Department and it was kind of a loophole and it needed a lot of money to do something, and they got it there, and it has been with them since. They want to get rid of it. It is not their job. It is for people who can't afford the operation, whether it is done from Health and Human Services or whether it is done from them. Education, one of the reasons was that there was a 75 percent match, Health and Human Services, 50 percent match.

SENATOR LOVEJOY: Senator J. King, then is this capped at $500,000 is that what you are telling me? The need then could exceed this, is that correct?

SENATOR J. KING: It is capped at $336,000 a year and it is a revolving account. If you only use $6,000 the money stays in there and you just supplement it with $6,000 next year. You try and keep that balance every year. You don't keep adding $336,000 every year.

SENATOR LOVEJOY: But if you run out of money . . .

SENATOR J. KING: Then you find some other way of doing it.

SENATOR LOVEJOY: Thank you.

Amendment adopted.

Ordered to third reading.

SB 73-FN-A, an act making an appropriation to promote international tourism. Appropriations committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Appropriations would like to move ought to pass on SB 73. The international tourist sector is widely regarded by New England as having strong growth potential. Their prevailing currency exchanges in the European and Asian market are a positive incentive to travel in the United States. This is a letter that was sent to me by the lakes region and I think that it states clearly why we are involved in this. Unfortunately, we only appropriated $1 at this time, although we do support that, there needs to be a great deal more money. Presently, the Governor has appropriated, recommended in his operating budget, a new program for international commerce. It is funded by the general fund at $550,000 for the fiscal year of 1995. It would appear reasonable to coordinate the efforts between the office of Travel and Tourism and develop the office of International Commerce to the capitalization and the efforts of both. Presently, for every dollar spent, the domestic market we gain is revenues of $7.59. It is believed that in the international market that it is six times that of the $7.59 we would be returning on every dollar spent. We would ask ought to pass.

Adopted.

Ordered to third reading.

SB 93-FN-A, an act relative to the National Science Foundation's statewide systemic initiatives program and making an appropriation therefor. Appropriations committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: SB 93 was unanimously approved by the Appropriations committee. We request your approval. It is the same bill that was passed by the policy in this Senate. As you recall, $330,000 brings us $10,000,100,000. If you have any questions I would be glad to answer them. We ask ought to pass.

Adopted.

Ordered to third reading.

SB 94, an act relative to work force development making an appropriation to the Department of Postsecondary Technical Education to support a pilot satellite program in Haverhill to promote north country economic development, establishing a customized training program for economic growth and making an appropriation therefor. Appropriations committee. Ought to Pass with Amendment. Senator Disnard for the committee.

2210B

Amendment to SB 94

Amend RSA 12-H:2 as inserted by section 12 of the bill by inserting after paragraph XIV the following new paragraph:

XV. The commissioner of postsecondary technical education.

SENATOR DISNARD: Once again, the Appropriations committee unanimously approved of SB 94. It is almost exactly as the Senate passed it in this session already. The only change is on page nine. It went to a committee and it was established that one new position was added, the Commissioner of Post Secondary Education. I would be happy to answer any questions, but we did ask this before.

SENATOR COLANTUONO: The $100,000 being spent in this bill . . .

SENATOR DISNARD: Which section of the bill is it in, the satellite program?

SENATOR COLANTUONO: Section eight, the $100,000.

SENATOR DISNARD: What page are you on, sir?

SENATOR COLANTUONO: Page three.

SENATOR DISNARD: Thank you.

SENATOR COLANTUONO: Can you just enlighten me on what that money is being spent on?

SENATOR DISNARD: That is for the satellite program in the Haverill area which we approved before. One time last year, a technical college was bequeathed in that area with the workings of the assistance of the Vocational Technical Division. It was determined that the satellite program from the Berlin Technical Colleges and others would handle this. The sum of $60,000 was appropriated for the first year and $40,000 for the second year and the money . . . why it is more the first year is because they need to get some equipment and establish an office and to have a part-time person there to assist with establishing the programs and taking care of the industry in the area, and the inquiries from people for the types of courses and could they have these courses?

SENATOR COLANTUONO: And the $1 million that we are appropriating on page seven of the bill, can you explain what that is for?

SENATOR DISNARD: That is $500,000 each year and this is for customized training, if I could use that term. Presently, the state of New Hampshire attempts to keep and retain industry, attract industry. And there is no method, even though we say that we have the technical colleges of vocational skills, high schools, to re-train people for the new jobs that an industry may take over because of the defense industry problems. It is money to attract and train and retraining.

SENATOR COLANTUONO: Are these amounts in the Governor's budget or is this additional money over and above what was proposed?

SENATOR DISNARD: I would have to say that it is additional money, over and above.

SENATOR PODLES: Senator Disnard, is there a fiscal note on this?

SENATOR DISNARD: The fiscal note is $100,000 appropriated for the technical college and $1 million is appropriated for the customized training program. I think that is the total sum.

SENATOR PODLES: So it is $1,100,000 total?

SENATOR DISNARD: One million one hundred thousand dollars, is my understanding.

SENATOR PODLES: A year, or is it on the biennium?

SENATOR DISNARD: The biennium. Sixty thousand the first year and $40,000 the second year for the technical programs in Haverhill and the north country. Five hundred thousand the first year and $500,000 the second year for the customized training.

SENATOR PODLES: Thank you.

Amendment adopted.

Ordered to third reading.

SB 139-FN-A, an act requiring the Department of Environmental Services to design a river basin planning and assessment program and making an appropriation therefor. Appropriations committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: This is the same bill that I reported when it came out before us last time. It basically gives the state the opportunity to find out what we do have in each watershed and river basin in terms of quantity and what the planning purposes in terms of what industry we can allow and how much water usage we will be able to allow people to withdraw in terms of economic development in regional forecasting as far as what would be available. We would urge passage of this bill.

SENATOR LOVEJOY: Senator Russman, there is a New England Rivers Basin Commission that meets regularly and New Hampshire is a participating member of that division. Is this work redundant of any of their doing or is it in conjunction with them?

SENATOR RUSSMAN: Well, I guess you would say that it was in conjunction with, I mean they don't actually measure volume, and that is what we are concerned with; in other words, what does each of the major river sources have available for it, and the commission that you are talk-

ing about deals more with pollution and things of that nature and how to keep things clean, so they are really two separate items. But I mean I suppose they will eventually work hand in hand because if you know what the volumes are and those types of things, whether it is dilutions from pollution purposes like waste treatment facilities and things of that nature or drinking water usage or ski areas and that type of thing, you would have a better handle on what is available in terms of allowing who, or each community or each industry, to take a certain amount of water from the given watershed.

SENATOR LOVEJOY: I have a question that is to the Department of Environmental Services and I would ask is there is a reason why it didn't go to the State Planning Office where the other river basin work is being done?

SENATOR RUSSMAN: Yes, they already have done some. Apparently, DES has already done some of the work on this river basin plan. Their-intent was to work with the Office of State Planning in terms of man power to coordinate so that they don't have a duplication of effort by one or the other agency. That was the understanding at least, that they had more expertise as far as that goes over in DES.

SENATOR LOVEJOY: I guess, Mr. President, that my concern is that this is an additional expenditure over what is already being done by another department.

SENATOR RUSSMAN: It is different things, quite frankly, and that is the thing. They have no plan over at the Office of State Planning to do anything about measurement of river basins or watershed areas and that is the problem.

SENATOR LOVEJOY: Thank you.

SENATOR BARNES: What is it, $25,000?

SENATOR RUSSMAN: I believe so.

SENATOR BARNES: Every year?

SENATOR RUSSMAN: I don't know if it will be every year, frankly. I don't know how much will be involved in terms of the measuring the volume of each watershed area and that is the problem. And even then they average it over a period of a year to try to determine what can be taken. Obviously, the Loon Mountain thing is what started this all, this thing as far as how much can a ski area take and still have enough water for the discharge of waste treatment facilities into the river and still have enough water to accomplish both of those. So that is what got this started. Nobody knows what is in the different things.

SENATOR BARNES: Maybe I am missing something, but it seems to me that this would be the cost of doing business. Is that going to come in with the ski resort or whatever, and I have to know how much water that I need. I think that that is the cost of doing business and I don't know why the state should be paying for that and I have a problem with that.

SENATOR RUSSMAN: I hear what you are saying and I guess my response would be this: that in the event that we try to . . . let's say that you have competing industry and a municipality and so on and who has priority and what type of thing, I mean does the ski area have priority, does the drinking water have priority, does sewer discharge, and most people up until now, at least, until the Loon Mountain thing came along,

said pretty much, well the river is there let us just take it and let's just use it. Now we know that as far as what is going to happen in the future, we are going to have industries coming into the state or towns seeking to expand, say waste treatment facilities or attempt to take more drinking water out in greater usages and we need to know how much is there in order to properly permit and things of that nature. Because eventually, there may be some type of permitting process in terms of how much water would be available and how much people could take.

SENATOR BARNES: I understand what you have said. It still doesn't answer my question, I don't think. I hear what you are saying to me, I do understand what you are saying to me, but I still feel that it is up to the business that is coming in there or the community. You know if the community is going to do something as you are saying, and let them pay for the study to see what is going on. Why should we finance that?

SENATOR RUSSMAN: Well the problem is that if you have it along the full length of the river, you are not going to know if, like, in other words, if somebody 50 miles north of one area is not going to know what the other person is doing. At least if the state has some understanding of it and has knowledge of what is in there for capabilities, they will be able to share that in terms of how do you best meet all of the needs of all of the people who are along the river that are trying to take water out of it.

SENATOR BARNES: Would you believe that I believe that. But after the study is done by the state, why can't they put something in here to have the business that is going to benefit from this, to pay the state back instead of the state paying for the whole cost of it?

SENATOR RUSSMAN: Well, I think that that may be one possibility, but in terms of trying to get businesses to come here when they come to State Planning and ask "what have you got for us, we need this amount of water?" we have to know what we have available before they will even look there. Now they may want to do more detailed studies and we may require them to do more detailed studies. But in the first instance, we need to know what the volumes are in terms of how much water is available for whatever the given industry is. I know that we have been talking about this tannery that wants to come here from Maine. They may use an awful lot of water and before they even get here, the provisional question might be, going to the state, "how much is available for us to use or are there going to be any requirements or limitations"? and we would have that knowledge to be able to use in a rational manner.

SENATOR BARNES: Good. Thank you.

SENATOR PODLES: Senator Russman, I need some clarity here regarding the appropriation. Would you say that that is a one time appropriation of $25,000? I am not sure what you said when you were asked this question by Senator Barnes?

SENATOR RUSSMAN: I don't know that. I don't know if it is a one time. My guess is that the $25,000 will not do the entire state of New Hampshire. I think . . .

SENATOR PODLES: Senator, we are passing a bill here and you don't know what that $25,000 is going to be for?

SENATOR RUSSMAN: I don't know for certain how far that will go. But my understanding is that is not going to carry a study through till the end because there is a tremendous amount of work involved as far as mea-

suring the various quantities and setting up metering stations that can actually do that in terms of flowage and that type of thing. I would yield to Senator Blaisdell.

SENATOR BLAISDELL: It is only a one time appropriation, Senator Podles, and it goes with the Budget, it is the budget process and that is it.

SENATOR PODLES: Senator Russman, that is not what you said before. You said something about on a yearly basis.

SENATOR RUSSMAN: I don't know if Senator Blaisdell's answer resolved your problem or not. I will have to go with what the Finance Chairman says.

Adopted

Ordered to third reading.

SB 143-FN-A, an act establishing a process for policy analysis of state agencies and making an appropriation therefor. Appropriations committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill establishes a Policy Analysis Division of the office of the Legislative Budget Assistant to prepare policy analysis reports. During the summer there was a committee set up on a sunset review and there was found a better way of doing it and they assigned it to a policy analysis committee. I might add that if you look at the sponsors of the bill, many people were surprised when they saw Representative Shawn Jasper and Representative Copenhaver agreeing on the same bill, so that will probably speak for itself, probably. Right now, the LBA does the performance audits and the fiscal audits. This will add the team that will do the policy analysis. This would deal with what the policy of the legislature is and the recommendations that would come from that committee would be worked on by the legislature. We move ought to pass.

Adopted.

Ordered to third reading.

SB 148-FN-A, an act making appropriations non-lapsing for regional vocational education tuition and transportation, and allowing the Kearsarge regional school district to hold its 1994-1995 annual meetings in such places as the officers deem appropriate. Appropriations committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: Mr. President, SB 148-FN-A was unanimously passed by the Appropriations committee and we also ask for your approval. It is the same bill that we passed with an amendment from Senator Currier. I will answer any questions that you may have but it has not changed.

Adopted.

Ordered to third reading.

SB 156-FN-A, an act relative to the Portsmouth Naval Shipyard and making an appropriation therefor. Appropriations committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2345B

Amendment to SB 156-FN-A

Amend the bill by replacing sections 2 and 3 with the following:

2 Appropriation. The sum of $50,000 for the fiscal year ending June 30, 1993, is hereby appropriated to the department of administrative services for the purposes of allocating funds, with prior approval of the fiscal committee and governor and council, to the Seacoast Shipyard Association, for the purposes of section 1 of this act. The appropriation shall not lapse until June 30, 1995. The governor is authorized to draw his warrant for said sum out of any moneys in the treasury not otherwise appropriated.

3 Effective Date. This act shall take effect upon its passage.

SENATOR HOLLINGWORTH: We would like to ask ought to pass with amendment on SB 156, the vote was unanimous. This bill will make an appropriation to the Shipyard Association to cover costs involved in lobbying in Washington to keep the yard open. We believe that this is very important. There is a great deal of pressure being placed on the legislative process in Washington, and we feel that this is extremely important. The payroll at the shipyard is almost $265 million with an economic impact of over $324 million. If the shipyard should close, 14,000 jobs would be lost. We would like you to support the committee report of ought to pass with amendment so that we can continue to be able to fight for our position.

SENATOR BARNES: I heard you say earlier today, I believe, that money will be looked at by Governor and Council?

SENATOR HOLLINGWORTH: It will be fiscal that we will have the authority to determine what should be paid out and the Governor and Council will have oversight over that.

SENATOR BARNES: Thank you very much.

Amendment adopted.

Ordered to third reading.

SB 169-FN-A, an act enhancing the Department of Environmental Services to perform environmental site assessment and remediation reviews required by lenders for the transfer of real property creating a groundwater management permit fee to fund such enhanced capability, and making an appropriation therefor. Appropriations committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee would like to ask ought to pass on SB 169-FN-A establishing a groundwater management permit fee. This is a recommendation of a study committee involved in the Environmental Permit process. It establishes the groundwater permit and appropriates monies for the new position in DES to run the permitting program. This will not be a cost to the state as the money will be derived from fees from business and industry. The BIA supported this, the environmentalist, and others supported it. No one appeared in opposition and this will return revenues to the state.

Adopted.

Ordered to third reading.

SB 176-FN-A-LOCAL, an act relative to kindergarten programs in local school districts and requiring an appropriation therefor. Appropriations committee. Ought to Pass with Amendment. Senator Disnard for the committee.

2308B

Amendment to SB 176-FN-A-LOCAL

Amend the bill by replacing all after section 1 with the following:

2 New Subdivision; Kindergarten Incentive Program. Amend RSA 194 by inserting after section 194:59 the following new subdivision:

Kindergarten

194:60 Planning and Promotion Grants. The department of education shall partially underwrite the costs of planning and promotion projects which address the importance of a public kindergarten program for students in school districts which do not currently offer such a program. Planning grants shall be available to assist school districts in determining adequate classroom space and designing a program which will be appropriately equipped, taught by qualified staff, and meet the educational needs of students. Proposals shall also include a strategy for voter approval of a public kindergarten program. Promotion grants shall be available to assist school districts with the partial support of kindergarten programs during the first 2 years of their operation, and shall be used only for those costs directly related to the kindergarten program including instructor salary and benefits and short-term operating expenses. School districts shall be selected for planning and promotion grants based on criteria established by the state board of education.

194:61 Rulemaking. The commissioner of education shall adopt rules, pursuant to RSA 541-A, relative to the procedures and guidelines necessary to implement the purposes of this subdivision.

3 Kindergarten Incentive Aid Study Committee Established; Report.

I. There is established a committee to study the ability of the state of New Hampshire to share in the costs of kindergarten programs of the local school districts of the state to the end that:

(a) The more needy school districts may be assisted in providing their students with this proven educational program.

(b) Education throughout New Hampshire may be improved.

(c) Incentives may be provided for the maintenance of public kindergarten programs.

II. The committee shall consist of the following members, all of whom shall be appointed within 30 days after the effective date of this section. The first named senator shall serve as temporary chairperson and shall call the first meeting:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house, appointed by the speaker of the house.

(c) One member of the New Hampshire School Board's Association, appointed by that association.

(d) One member of the New Hampshire School Administrators Association, appointed by that association.

(e) One member of the New Hampshire National Educational Association, appointed by that association.

(f) The commissioner of education or a designee.

III. The committee shall make a report which evaluates the feasibility, costs, and appropriate incentives for kindergarten programs. The report shall also include the committee's recommendations relating to providing public kindergarten programs for all children in the state of New Hampshire. The committee shall submit its report, including recommendations for legislation, to the governor, the senate president, and the speaker of the house on or before October 1, 1993.

4 Appropriation. The sums of $50,000 for the fiscal year ending June 30, 1994, and $1,050,000 for the fiscal year ending June 30, 1995, are hereby appropriated to the department of education for the purposes of section 2 of this act. The governor is authorized to draw his warrant for said sums out of any money in the treasury not otherwise appropriated.

5 Effective Date.

I. Section 3 of this act shall take effect upon its passage.

II. Sections 1, 2, and 4 of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill appropriates funds to assist local school districts in establishing and maintaining kindergarten programs by providing planning and promotion grants and incentive aid, and establishes a kindergarten incentive aid study committee.

SENATOR DISNARD: Mr. President, SB 176-FN-A-L was unanimously passed as amended by the committee and we request your approval. I think that you will be very happy to learn that this is one bill that the appropriations committee received and cut almost $5 million from the bill. That should make you happy. What this bill does and you can refer to page 12 in the calendar. Right now in this particular state, I am sorry to say, 11,000 children, plus, do not receive kindergarten experience. About 8,000 children receive kindergarten experience from the public schools now and approximately 1,800 in the non public schools for $9,800 plus. All that this is, is $50,000 the first year. It is $1 million the second year for an incentive. If you will notice again on page 12 that the incentive study committee, and that is where the money was removed. And now we have a study committee to study the ability of the state of New Hampshire to share in the cost of kindergarten programs of the local school districts of the state. I think that you can read the purpose of the needy school districts. Education may be improved throughout the state, improvements of public schools. This probably would mean that the first year, which is 1994, about 10 school districts would receive $5,000 for programs to start up kindergartens, develop them, not buy text books, but to help with teachers' salaries, but $5,000 certainly is not going to fully fund or any way come near adequately funding kindergartens. It is a way to call attention to the communities that the state is interested in their problem and wishes to assist them further. The second year, the amount of $1 million would be available for those school districts and additional school districts to continue. And rules will be established by the state Department of Education. Certainly, this does not come anywhere near fully funding kindergartens. It was expressed earlier today by two Senators that in the Success by Six program, how important it was for kindergarten experience. Therefore, we ask for your unanimous support.

SENATOR MCLANE: I went out to try and find Senator Lamirande because I knew that she would like to be here for this, but I think that I can speak for both of us when I say that to hear a school superintendent tell us that he is glad that $5 million has been cut out of it, I don't think that it made us very glad. But I think that what it means is that this is a beginning and if it's all that we can afford, then it is better than nothing.

SENATOR PODLES: Senator Disnard, this is something that the state is going to appropriate, right? It is not a mandate for school districts?

SENATOR DISNARD: The word mandate should never be discussed with this particular item, in my view point, no. It is grants. The school districts that meet criteria that will be established by the state Department of Education. It is only enabling, it is only enticing, it is only a carrot for those school districts who think that it is something worthwhile to pursue. We indicated that and eliminated from the original bill the purchasing of text books or anything such as this in case some school districts might think that there is an opportunity to get a grant, purchase some equipment, but text books are not in there. No, there is no mandate.

SENATOR PODLES: So this is no way affecting 28-A of the Constitution right now?

SENATOR DISNARD: This in no way affects 28-A of the Constitution.

SENATOR COLANTUONO: Senator Disnard, was or is any part of this money in the Governor's budget?

SENATOR DISNARD: No.

SENATOR COLANTUONO: So did the Appropriations committee have any plan or any idea as to where this additional $1.1 million was going to come from?

SENATOR DISNARD: Yes, I assume that we do. Certainly a surplus could be attached. Certainly $83 million more than what we were told coming in from medicaid money. We were told that it was $200 million and the economics in the state is improving. Senator, I have sat here all year and heard millions of dollars being appropriated by this committee for other items. This is to help young people, who in some instances might be a burden on the communities in the state to do.

SENATOR COLANTUONO: Thank you.

SENATOR BLAISDELL: Mr. President and members of the Senate, I have said this before in many committees, but just to bring up a point, in the budget that was just passed over to us, for instance, the Governor recommended $1 million in indigent defense and the House took it out. I just want to remind this Senate that the Governor can suggest, whether or not it is in his budget or not. This body here is the one who has the decision and appropriates, we make the decisions. We think that this is a good decision, and I support the committee report. But just to show you that there is a difference in the other budgets that come over to us, the Governor wanted another $1 million in indigent defense and the House took it out. So if you want to spend it on that, that is where the money is.

SENATOR HOLLINGWORTH: I would just like to comment that in the last few years I have been listening to the Economic Development and everyone has said that education is the way to go for economic development. We have spent money in this body and we have allowed money to be spent for economic development and for our prisons, and yet we aren't inclined, well there are some of us that aren't inclined, to spend this small pittance, a small incentive on education, and I find that to be unfortunate. There is nothing that we could spend our money better, on that we are going to get a greater return, than on education of our children.

SENATOR BARNES: Senator Disnard, what does this do for the cities and towns that have kindergartens already in place in our state now? This does nothing for them or does it do something for them?

SENATOR DISNARD: Well, Senator, it does nothing for them in terms of dollars for the next two years. But if you will open your calendar to page 12 you will notice the incentive section that says, "there was established a committee to study the ability of the state of New Hampshire to share in the cost". So once we're having some accute, needed, required, study to determine what we might be able to do in the future to answer your questions.

SENATOR BARNES: Would you believe that I have been saying for a long time, not just since I have been up here, that kindergarten is very important and I sure wish we could find the money so kindergartens could be throughout our state?

SENATOR DISNARD: Sir, I was the superintendent, as was facetiously said earlier, of the school district that had the highest tax rate, at one time, in the state. We had kindergarten. But I do not see as the bill earlier indicated that we defeated, the state of New Hampshire in the analysis would come up with the difference between with that raise and $40 million. I support kindergartens as much as anybody in here and I always have, but we still have to be realistic and have the dollars to be able to do it.

SENATOR BARNES: You are absolutely right.

SENATOR DISNARD: Thank you.

Amendment adopted.

SENATOR HOLLINGWORTH: I would like to move floor amendment #2420. This takes a small sentence out of the amendment and removes it because there seems to be some problem with that language. We would like you to vote ought to pass with floor amendment.

Senator Hollingworth offered a floor amendment.

2420B

Floor Amendment to SB 176-FN-A-LOCAL

Amend the bill by replacing all after section 1 with the following:

2 New Subdivision; Kindergarten Incentive Program. Amend RSA 194 by inserting after section 194:59 the following new subdivision:
Kindergarten

194:60 Planning and Promotion Grants. The department of education shall partially underwrite the costs of planning and promotion projects which address the importance of a public kindergarten program for students in school districts which do not currently offer such a program. Planning grants shall be available to assist school districts in determining adequate classroom space and designing a program which will be appropriately equipped, taught by qualified staff, and meet the educational needs of students. Promotion grants shall be available to assist school districts with the partial support of kindergarten programs during the first 2 years of their operation, and shall be used only for those costs directly related to the kindergarten program including instructor salary and benefits and short-term operating expenses. School districts shall be selected for planning and promotion grants based on criteria established by the state board of education.

194:61 Rulemaking. The commissioner of education shall adopt rules, pursuant to RSA 541-A, relative to the procedures and guidelines necessary to implement the purposes of this subdivision.

3 Kindergarten Incentive Aid Study Committee Established; Report.

I. There is established a committee to study the ability of the state of New Hampshire to share in the costs of kindergarten programs of the local school districts of the state to the end that:

(a) The more needy school districts may be assisted in providing their students with this proven educational program.

(b) Education throughout New Hampshire may be improved.

(c) Incentives may be provided for the maintenance of public kindergarten programs.

II. The committee shall consist of the following members, all of whom shall be appointed within 30 days after the effective date of this section. The first named senator shall serve as temporary chairperson and shall call the first meeting:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house, appointed by the speaker of the house.

(c) One member of the New Hampshire School Board's Association, appointed by that association.

(d) One member of the New Hampshire School Administrators Association, appointed by that association.

(e) One member of the New Hampshire National Educational Association, appointed by that association.

(f) The commissioner of education or a designee.

III. The committee shall make a report which evaluates the feasibility, costs, and appropriate incentives for kindergarten programs. The report shall also include the committee's recommendations relating to providing public kindergarten programs for all children in the state of New Hampshire. The committee shall submit its report, including recommendations for legislation, to the governor, the senate president, and the speaker of the house on or before October 1, 1993.

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AMENDED ANALYSIS

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SENATOR COLANTUONO: I want to thank Senator Hollingworth and the Appropriations committee for proposing this amendment which took care of language in the original amendment which I found to be very offensive and I thank them for their cooperation.

Floor amendment adopted.

Ordered to third reading.

SB 197-FN, an act implementing Title V of the Clean Air Act. Appropriations committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2270B

Amendment to SB 197-FN

Amend RSA 125-C:15, I as inserted by section 12 of the bill by replacing it with the following:

I. Whenever the director or [his] ***the director's*** authorized representative finds that [a] ***any device or affected*** source of air pollution has resulted in a violation of any of the provisions of this chapter or any rules in force hereunder, ***or any condition in a permit issued under this chapter,*** the director shall issue a notice of violation and, where appropriate, an order of abatement establishing a compliance schedule with which said ***device or affected*** source shall comply. Any order of abatement shall become final and enforceable by the director within 10 days of its issuance unless an appeal is filed with the air resources council before the expiration of said 10-day period. The council shall hold a hearing on any such appeal promptly, and shall thereafter issue a decision upholding, modifying or abrogating the director's order of abatement or any part thereof. The council's decision shall become final 10 days after it is issued. Upon a finding by the director that [the public health is threatened, he may] ***there is an imminent and substantial endangerment to the public health or welfare or the environment, the director shall*** issue an order of abatement requiring immediate compliance and said order shall be final and enforceable upon issuance, but may be appealed to the council within 10 days of its issuance and the council may, after hearing, uphold, modify or abrogate said order.

SENATOR HOLLINGWORTH: I would like to defer to Senator Russman.

SENATOR RUSSMAN: Title V was of the Clean Air Act implementing that is a rather monumental task and it is going to generate a lot of money and spend a lot of money to do that. It requires some staffing increases. Basically what it deals with is it is the component of the Clean Air Act that works with point source reduction in terms of industry and what they can emit in terms of emissions. It sets up a permitting process that is required to be set up by November 15, 1993. It charges per ton on the emissions and the actual cost of per ton goes up as the years go by with the incentive being to reduce the emissions and that will eventually fund it. It is a requirement that if we don't do it, the feds do it for us and this certainly in other areas the state has done a good job in implementing permit programs and BIA and the other industries all support it. I certainly would urge passage of it.

Amendment adopted.

Ordered to third reading.

SB 209-FN-A, an act relative to the children's health plan and making an appropriation therefor. Appropriations committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: I would like to yield to Senator McLane who has worked long and hard on this bill.

SENATOR MCLANE: Thank you, I have not only worked long and hard, but a great many people have as well and this is our first priority. This bill would provide for children's health for a doctor for every child, for health care, for immunization, for children from originally one to eighteen up to 185 percent of poverty. That is the fiscal note on the bill. The amendment does what the Governor asked. We were so pleased that the

Governor actually put this into his budget at 150 percent up to nine years old, that you could have knocked us over with a feather. So we grabbed his bill and amended ours to make it the Governor's. I am speaking because I want to give fair warning to the fact that the Governor has put $500,000 in each year of the biennium for children's health for children up to nine years old. We have several hopes to amend it. As I pushed off in the Governor's Ski Race, the Governor yelled at me, "what do you want"? I yelled back, "one eighty five percent of poverty" and he knew just what I was talking about because I have told him this again and again. The other alternative would be to go to 185 percent of poverty just for pregnant women and children to one year old. That money for every dollar you put in you get $10 back before the kid gets to first grade. It is a stupid investment not to make for the state of New Hampshire and every other New England state goes to 185 percent of poverty, Vermont goes to 225. So at this point we are going to leave this as the Governor's bill, up to nine years old, up to 150 percent of poverty with the money in the Governor's budget. But it is my hope that between now and June to somehow beef that up, because for every dollar that we put in we will get plenty back in healthy kids. Thank you.

Adopted.

Ordered to third reading.

SB 216-FN-LOCAL, an act relative to persons and estates chargeable for support. Appropriations committee. Ought to pass. Senator J. King for the committee.

SENATOR J. KING: The bill with amendment removes children from financial responsibility for expenses by a resident or a patient at public, private or other institutions. Basically this is the state hospital in most cases. What has happened is that the support payments if you are able to pay them, they will get the money, if not, they can hold them and the same thing with any estate that they can tax. As it is written now, if anyone having a father, mother, son, daughter, wife, whose estate is more than sufficient to pay, the priority. What has happened is that there has been all kinds of confusion. So as a result, we have eliminated all except the father and mother and the husband or wife. We also said that it could be the responsibility only up to the age of 18 years of age. This bill is needed, first of all, to cause less confusion at the division. The state hospital helped us in writing the bill and, therefore, is in support of it. They claimed that they would probably lose about $100,000 a year, but in the long run you would save it because of the lawyers' fees.

Adopted.

Ordered to third reading.

SB 231-FN-A-LOCAL, an act relative to lead poisoning and control and continually appropriating a fund to the Director of Public Health Services. Appropriations committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2318B

Amendment to SB 231-FN-A-LOCAL

Amend RSA 130-A:1, VII as inserted by section 2 of the bill by replacing it with the following:

VII. "Encapsulation" means resurfacing or covering surfaces with such substances, including paints, as are approved as encapsulants under Section 402(a) of Title IV of the Toxic Substances Control Act, 15 U.S.C., section 2601, et. seq., and sealing or caulking with durable materials, to prevent or control the creation of lead exposure hazards, unless otherwise defined by the United States Environmental Protection Agency in which case the federal definition shall apply.

Amend RSA 130-A:1, XVIII as inserted by section 2 of the bill by replacing it with the following:

XVIII. "Owner" means any person who, alone or jointly or severally with others, has legal title to any dwelling, dwelling unit, or child care facility, or a person who has charge, care or control of a dwelling, dwelling unit, or child care facility as an agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. An agent of the owner excludes real estate, property management, and other entities which do not have authority to fund capital or major property rehabilitation on behalf of the owner. The term "owner" does not include a person who holds indicia of ownership primarily to protect a mortgage interest or security interest in real or personal property on or at a dwelling, dwelling unit or child care facility and who does not participate in the management of a dwelling, dwelling unit or child care facility. For the purpose of this definition, the owner of publicly owned dwellings, dwelling units or child care facilities shall be the chief administrative officer of the responsible town, city, county or state agency.

Amend RSA 130-A:1, XIX as inserted by section 2 of the bill by replacing it with the following:

XIX. "Participating" or "participate" "in the management of a dwelling, dwelling unit or child care facility" means the actual participation by a holder in the management or operational affairs of a dwelling, dwelling unit or child care facility, including without limitation where a holder exercises control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decision-making with respect to all or substantially all of the operations (as opposed to financial or administrative) aspects of the dwelling, dwelling unit or child care facility. The following types of activities, in and of themselves, shall not constitute participation in the management of a dwelling, dwelling unit or child care facility:

(a) Taking title to a dwelling, dwelling unit or child care facility by foreclosure, by accepting a deed to such dwelling, dwelling unit or child care facility in lieu of foreclosure, by taking title to such dwelling, dwelling unit or child care facility by other similar means or the transfer or sale of such dwelling, dwelling unit or child care facility.

(b) Conducting, or requiring the borrower to conduct, an environmental assessment or audit of the dwelling, dwelling unit or child care facility.

(c) Withholding funds under an existing obligation or restructuring or renegotiating the terms of a borrower's obligations, including, but not limited to, requiring the payment of interest, the extension of payment periods or the issuance of additional funds.

(d) Providing financial advice to the borrower.

(e) Requiring or advising the borrower to comply with federal, state and local laws, rules, regulations, orders and permits.

(f) Collecting rents, maintaining utility services and securing the dwelling, dwelling unit or child care facility from unauthorized entry.

(g) Undertaking a lead base substance abatement.

XX. "Person" means any individual, corporation, company, association, partnership or other entity and includes town, city, county and state governmental agencies.

XXI. "Primarily to protect a mortgage interest or security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing the payment or performance of the loan or other obligation.

Amend RSA 130-A:2, I(g) as inserted by section 2 of the bill by replacing it with the following:

(g) Provide training for and maintain an active program of coordination with health authorities relative to the control of lead base substances in owner-occupied and renter-occupied housing, with specific regard to the conduct of inspections, lead base substance abatement, in-place management, and enforcement activities carried out under this chapter. The director shall make reasonable efforts to ensure that such training programs are held in areas with high incidence of lead exposure hazards, and that property owners are educated about methods to prevent lead exposure hazards before they arise and how hazards can be addressed once identified.

Amend the introductory paragraph of RSA 130-A:5, I as inserted by section 2 of the bill by replacing it with the following:

I. The director may investigate cases of lead poisoning in children reported under RSA 141-A whose blood lead level meets or exceeds 20 micrograms per deciliter of whole blood. The director may also conduct investigations when there is reason to believe that a lead exposure hazard, as defined in RSA 130-A:1, XVI(b) and (d), for a child exists. Such investigations shall include, but not be limited to:

Amend RSA 130-A:8 as inserted by section 2 of the bill by replacing it with the following:

130-A:8 Occupants 6 Years of Age or Less. No person shall knowingly rent a dwelling or dwelling unit which has a lead exposure hazard present, when such dwelling or dwelling unit is to be occupied by a child.

Amend RSA 130-A as inserted by section 2 of the bill by inserting after RSA 130-A:8 the following new section:

130-A:8-a Relocation of Tenants.

I. In circumstances where the presence of a lead exposure hazard is unsuspected and becomes known when the dwelling or dwelling unit is already rented to a family with a child, the owner may temporarily relocate the family during the abatement. The temporary relocation shall meet all of the following conditions:

(a) The tenant must be offered an available replacement dwelling which is safe, sanitary, and does not contain an interior lead exposure hazard defined in RSA 130-A:1, XVI(b). If a child in the tenant family has been found to have a blood lead level which exceeds 30 micrograms per deciliter, the dwelling shall not contain any lead exposure hazard.

(b) The owner shall make reasonable efforts to locate a replacement dwelling in the same elementary school district as the unit from which the family is being relocated.

(c) The rent for the replacement unit shall not exceed the rent for the unit from which the family is being displaced. The tenant has the duty to pay rent for the replacement dwelling unit provided, however, that any rent paid by the tenant for the unit from which the tenant has been displaced which covers the time period that the tenant occupies the replacement dwelling shall be paid to the owner of the replacement

dwelling by the owner of the original unit. The owner may relocate the family to a dwelling unit that is more expensive than the original unit, provided that the owner pays the difference in rent between the 2 units.

(d) The owner shall agree in writing to permit the family to reoccupy the original dwelling unit as soon as the lead exposure hazard has been abated.

(e) The owner shall pay the reasonable and actual costs of relocation from and back to the original dwelling unit. The owner may, at such owner's sole option, move the tenant's household furnishings and personal property himself or by using agents or employees, rather than pay the tenant to have such tenant's possessions moved. The payment of moving expenses authorized under this subparagraph shall not exceed the amount of the tenant's security deposit plus the prepaid rent.

II. Eviction of a family based on the presence of a lead exposure hazard shall not be permitted when the method of abatement chosen by the owner is interim controls or encapsulation. When the owner has been given a written order to abate by the director pursuant to RSA 130-A:7, the owner may bring an action to evict the family when all of the following conditions have been met:

(a) The method of abatement can reasonably be expected to require more than 30 days to perform.

(b) The tenant shall be offered an available replacement dwelling which is safe, sanitary, and does not contain a lead exposure hazard.

(c) The replacement unit shall be comparable in size to the unit from which the family is being relocated.

(d) The owner shall make reasonable efforts to locate a replacement dwelling in the same elementary school district as the unit from which the family is being relocated.

(e) The rent shall be comparable to the rent for the unit from which the family is being displaced.

(f) The owner shall agree in writing to permit the tenant to reoccupy the original dwelling unit when the lead exposure hazard has been abated, provided that:

(1) The abatement occurs within 6 months of the date the tenant moved out of the original dwelling.

(2) The tenant provides the owner with written notice of the address where such owner can be contacted when the lead exposure hazard has been abated.

(3) Within 10 days of receiving the offer to reoccupy the original unit, the tenant agrees to do so.

(4) The tenant agrees to resume the tenancy within 30 days of accepting the owner's offer.

(g) Prior to the time the family vacates the unit, the owner shall return the tenant's security deposit, regardless of any rental arrears owed by the tenant or the condition of the unit, plus all prepaid rent.

(h) The landlord provides the tenant with a 30-day notice-to-quit pursuant to RSA 540:2, II(f). Such notice shall inform the tenant of the tenant's right to the return of the security deposit and prepaid rent and the right to reoccupy the premises as set forth in RSA 540:2, II(f).

III. When an owner has been given a written order to abate by the director, pursuant to RSA 130-A:7, the owner may withdraw the dwelling unit from the residential rental market in lieu of undertaking abatement of the lead exposure hazard. In such a case, the owner may bring an action to evict the family if the owner fulfills all of the conditions set

forth under paragraph II. The dwelling unit shall not be subsequently rented for residential purposes without the abatement of all of the lead exposure hazards associated with the unit.

IV. Any owner who violates paragraph III by re-renting the dwelling unit for residential purposes without first abating the lead exposure hazard shall be subject to the remedies set forth in RSA 130-A:14 and 16, and liable to the family who was evicted due to the lead exposure hazard in the amount of $1,000 plus costs and reasonable attorney's fees. Each dwelling unit re-rented without abatement shall constitute a separate violation.

V. Any owner who conveys, sells, or transfers an interest in a dwelling unit which has been withdrawn from the residential rental market pursuant to paragraph IV without disclosing in writing the existence of the director's order shall be subject to the penalties set forth in RSA 130-A:14 and 16. The conveyance of each dwelling unit so transferred shall constitute a separate violation. No buyer or transferee who has notice of the director's order may rent the dwelling unit without first abating the lead exposure hazards identified in the order.

VI. Any owner who fails to comply with subparagraph II(f) shall be liable to the displaced tenant in the amount of $500 plus costs and reasonable attorney's fees.

VII. The refusal of a family to temporarily relocate after the owner has met all of the requirements of paragraph I shall constitute grounds for eviction pursuant to RSA 540:2, II(d).

VIII. Any tenant who is party to a written lease and who is forced to relocate due to a lead exposure hazard may, at his sole option, terminate the lease as of the day it relocates from the dwelling unit. The tenant wishing to terminate shall provide written notice to the owner or the owner's agent within 7 days of the date of relocation. Once the tenant provides such notice, the owner shall no longer be liable for a rent supplement, if any, paid pursuant to subparagraph I(c).

Amend RSA 130-A:10, IV as inserted by section 2 of the bill by replacing it with the following:

IV. Fees to be collected for the issuance of licenses to lead inspectors, lead abatement contractors, for certification of lead abatement workers, for testing resulting from investigations, for certification of laboratories, and for notifications under RSA 130-A. Property owners who own more than 4 but fewer than 7 dwelling units shall pay a fee for licensure which is 1/2 of that paid by other lead abatement contractor licensees. Such reduced fee license shall only be valid for work on dwellings or dwelling units owned by such license holder.

Amend RSA 130-A:12, I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) Any owner who owns 4 or fewer dwelling units shall not be required to obtain a lead abatement contractor license to perform lead abatement on such owner's dwellings or dwelling units, provided that such owner shall comply with all rules adopted under RSA 130-A:10, I.

Amend the bill by replacing section 5 with the following:

5 Paint Hazard Added. Amend RSA 540:2, II(d) to read as follows:

(d) Behavior of the tenant or members of his family which adversely affects the health or safety of the other tenants or the landlord or his representatives, ***or failure of the tenant to accept suitable temporary relocation due to lead-based paint hazard abatement, as set forth in RSA 130-A:8-a, I.***

6 New Paragraph; Lead Exposure Hazard. Amend RSA 540:2 by inserting after subparagraph (e) the following new subparagraph:

(f) The dwelling unit contains a lead exposure-hazard which the owner will abate by:

(1) Methods other than interim controls or encapsulation;

(2) Any other method which can reasonably be expected to take more than 30 days to perform; or

(3) Removing the dwelling unit from the residential rental market.

7 Effective Date. This act shall take effect July 1, 1994.

AMENDED ANALYSIS

This bill rewrites RSA 130-A, relative to the lead paint laws. All fees collected under the chapter are to be deposited into a lead poisoning prevention fund, which is continually appropriated to the director of public health services for the purposes of this chapter.

SENATOR HOLLINGWORTH: The committee on Appropriations would like to ask ought to pass with amendment. The amendment being found on page 13. Today it is my pleasure to bring before you SB 213. As you recall, this bill was meant to update and improve upon our existing lead poisoning prevention laws. For over a century lead poisoning has been regarded as the cause of illness in children and adults. Young children especially are at risk of becoming lead poisoned and are much more likely to have their nervous systems damaged by lead. The lead poison may cause hearing loss, stunt growth, behavior problems, anemia, and can keep children from reaching their full intelligence potential. I am sure that most of you know that SB 231 has been controversial. At times the process of developing this legislation seemed to put the welfare of children against the legitimate interest of property owners. You may remember that some of those issues were debated when we discussed this bill earlier. I am pleased to report to you that since that time, many individuals representing children, tenants' rights, bankers' interest, realtors and property owners, have met with our public health officials. Those meetings have resulted in a series of proposed amendments to the bill which, on balance, provided all of the different groups participating in the process with a basis to support SB 231 as a result of those positive changes. The members of the Senate Appropriations committee voted five to nothing in favor of the amended bill. I would hope that you would do the same. Thank you.

Amendment adopted.

Ordered to third reading.

SENATE RULES DEADLINES

SENATOR BLAISDELL: I want to explain the dates to you. You might be interested in this because it is going to give you some more time, because the Rules committee met and made changes to the deadline dates as follows and you might want to look at it:

May 20-replaces April 22 as the deadline to have all House Bills out of the Senate.

May 25-replaces May 21 as the last day to appoint Committee of Conference members

and that the session days be adjusted accordingly.

This was voted on in the Senate Rules committee, it is going to give us some more time, as I said, to get the House Bills out of the Senate. And also it gives the Senate President a little bit more time to appoint the Committee of Conference members. If you have any questions I will be glad to answer them, but I think that it is pretty obvious that we are going to get some more time on the crunch to get some House Bills out of the Senate. I move approval of the Senate Rules as amended by the Rules committee.

Adopted by the necessary 2/3 vote.

SB 2, an act redesignating a portion of New Hampshire Route 51 as New Hampshire Route 101. Capital Budget committee. Ought to Pass. Senator Wheeler for the committee.

SENATOR WHEELER: SB 2 is renaming Route 51 from Stratham over to I-95 the committee felt that it would be a good idea to direct the traffic over the turnpike and away from the downtown roads.

Adopted.

Ordered to third reading.

SB 4, an act relative to a capital appropriation for state house repairs. Capital Budget committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, SB 4 is for appropriations that are needed for the repair of the State House dome and to other overdue State House projects. The $250,000 leftover from the dome project will be used to repair and paint the exterior of the State House and to repair the State House windows and to restore room 120 of the State House. These projects are necessary and are an excellent use of these leftover funds.

Adopted.

Ordered to third reading.

SB 68, establishing a challenge grant to restore and preserve the Nansen ski jump facility. Capital Budget committee. Ought to Pass. Senator MacDonald for the committee.

SENATOR MACDONALD: A short 40 or 50 years ago we had two great ski jumps. One was up at Gunstock, up in Gilford, and the other one was located just a little bit north of Berlin. They want to keep that standing. It hasn't been used for years, but the base in good shape. It needs some work and they have tried to raise some money up there. They have two years to raise it and we will match 25 cents on the dollar, but they have to raise the money in two years, so they have to get moving.

Adopted.

Ordered to third reading.

SB 103, an act relative to the construction of exit 10 on the Spaulding Turnpike. Capital Budget committee. Ought to Pass with Amendment. Senator Baldizar for the committee.

2236B

Amendment to SB 103

Amend the bill by replacing section 2 with the following:

2 Environmental Study; Construction. The commissioner of the department of transportation shall proceed with the environmental study necessary for the construction of exit 10 as authorized by RSA 237:2, II-a. The study shall address the proposed construction of exit 10, and the necessary road network to connect the new interchange to NH route 108.

SENATOR BALDIZAR: Mr. President and members of the Senate, SB 103 as amended merely supports the Senate's position on the project and that is that we do support the project. It deletes language that makes it a highest priority or a higher priority than other projects. Some of us had a problem with that. But the bill as amended supports the Senate's position. Thank you.

Amendment adopted.

Ordered to third reading.

SB 166, an act giving the highest priority to a project in Hillsborough as part of the 10-year highway construction and reconstruction plan. Capital Budget committee. Ought to Pass with Amendment. Senator Wheeler for the committee.

2174B

Amendment to SB 166

Amend the title of the bill by replacing it with the following:

AN ACT

requiring the department of transportation to continue with the Hillsborough reconstruction bypass project.

Amend the bill by replacing all after the enacting clause with the following:

1 Hillsborough Reconstruction Bypass. The general court hereby encourages the commissioner of the department of transportation to continue with the scheduled Hillsborough reconstruction bypass project in the 10-year highway construction and reconstruction plan. In accordance with the 10-year highway construction and reconstruction the commissioner shall complete the environmental impact statement and the public hearing process and acquire the rights of way necessary to meet the proposed date of construction.

2 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill requires the commissioner of the department of transportation to continue the scheduled Hillsborough reconstruction bypass project in the 10-year highway plan by requiring that certain preliminary components of the project be completed to meet the proposed date of construction.

SENATOR WHEELER: The Capital Budget committee also recognizes the worthiness of the project, but has taken out the words, "giving highest priority, to the project". We ask you to pass the bill as amended.

Amendment adopted.

Ordered to third reading.

SB 137-FN-LOCAL, an act requiring municipalities to pay back to the state on a prorated basis moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes. Capital Budget committee. Ought to Pass With Amendment. Senator Shaheen for the committee.

2418B

Amendment to SB 137-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

requiring municipalities to pay back to the state 50 percent of the moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Repaying the State Treasury. Amend RSA 198:15-b by inserting after paragraph V the following new paragraph:

VI. Any school district, city maintaining a school department, or cooperative school district receiving aid under this subdivision shall pay back to the state treasurer 50 percent of the state building aid paid to date, if such building, while the bond is outstanding, is no longer used for educational purposes as provided in RSA 198:15-a. The commissioner of education may waive the required repayment if a school district is able to show evidence that such repayment would cause financial hardship for the school district.

2 Applicability. This act shall apply to all educational facilities which are approved for building aid on or after the effective date of this act.

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill requires municipalities to pay back to the state 50 percent of the moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes.

The bill is applicable to all educational facilities which are approved for building aid on or after the effective date of the act.'

SENATOR SHAHEEN: Let me just call the Senate's attention to the fact that the reason that there is no recommendation in your calendar is because the committee didn't exec this bill out until this morning. The committee voted ought to pass on SB 137 with an amendment, which appears in the addendum to the calendar, number 25, the yellow addendum. What the amendment does is to tie the prepayment to the building fund to the life of the bond to the school. It requires that payment be only 50 percent of what has been paid into the state building aid should a school district decide to use a building for some purposes other than for school. As I said, the committee voted ought to pass with amendment and I would urge the Senate to support the committee's report.

Amendment adopted.

Ordered to third reading.

SB 177-FN, an act relative to the Sagamore Creek bridge on U.S. Route 1 in the city of Portsmouth and the Cascade Street bridge between the city of Berlin and the town of Gorham and making an appropriation therefor. Capital Budget committee. Ought to Pass With Amendment. Senator MacDonald for the committee.

2282B

Amendment to SB 177-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Sagamore Creek Bridge Reconstruction; Priority. The commissioner of the department of transportation shall implement, as a priority, the reconstruction of the New Hampshire Route 1 Sagamore Creek bridge in Portsmouth upon acceptance of the environmental documents and receipt of the necessary permits. The department shall use appropriate state and federal funds, and local funds if applicable, for this purpose.

2 10-Year Highway Plan; Sagamore Bridge Widening Added. Amend 1986, 203:4-a, I(e) as inserted by 1988, 247:1 to read as follows:

(e) Seabrook-Portsmouth

Improvements on US Route 1 at various locations for the purpose of improving safety and increasing traffic carrying capabilities. ***Such improvements shall include widening of the Sagamore Creek bridge in the city of Portsmouth.***

3 Appropriation. The sum of $618,410 is hereby appropriated for the biennium ending June 30, 1995, to the department of transportation for the cost of environmental and preliminary engineering studies, purchase of rights-of-way and construction of the Cascade Street bridge, bridge number 225/038, which crosses the Canadian National Railroad between the city of Berlin and the town of Gorham. The department is authorized to accept federal and private funds that may be available for these projects, and this appropriation shall be reduced by the amount of such funds. If the city of Berlin or town of Gorham begin interim repairs on the Cascade Street bridge the department shall reimburse the city or town for the cost of such interim repairs. This appropriation shall be nonlapsing and is in addition to any other appropriation to the department of transportation for the biennium.

4 Bonds. To provide funds for the appropriation in section 3 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of $618,410 and for said purposes may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A, provided that the bonds shall have a maturity date of 20 years.

5 Payment. The payment of principal and interest on the bonds and notes issued for the project in section 3 of this act shall be made when due from the highway fund.

6 Contingency. Sections 3-5 of this act shall not take effect if the appropriation provided in section 3 of this act is included in HB 1-A and HB 1-A becomes law. If the appropriation in section 3 of this act is not included in HB 1-A or HB 1-A does not become law, sections 3-5 of this act shall take effect upon certification by the commissioner of the department of transportation and submission to the governor and council that such appropriation is not included in HB 1-A or HB 1-A has not become law.

7 Effective Date.

I. Sections 1, 2, 6 and 7 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect as provided in section 6.

AMENDED ANALYSIS

This bill requires the commissioner of transportation to widen the Sagamore Creek bridge on U.S. Route 1 in the city of Portsmouth.

This bill makes an appropriation to the department of transportation for the construction of the Cascade Street bridge between the city of Berlin and the town of Gorham. The appropriation shall not take effect if the funds are provided in the operating budget.

If the city of Berlin or town of Gorham begin interim repairs on the Cascade Street bridge the department shall reimburse the city or town for the cost of such interim repairs.

SENATOR MACDONALD: TAPE INAUDIBLE, Senate Transportation, we were trying to find a little tougher language for the Department of Transportation. So when it got to Capital Budget, we found that language. We found a stronger message to them but we did the same thing as we wanted to do in the original bill.

SENATOR DISNARD: I wish to object on SB 177 as I read it. I object once again to the Senate or the legislature indicating to the Department of Transportation on the bill that is passed out on legislative calendar 25 as a priority. I don't know about you people but I think that you had better pay attention to this as I have mentioned before. I live in an area where we don't have many votes in the Senate. We have had projects in the 10 year plan for 1993, 1994 pushed back to 1995, 1997, 1998, 1999. And as I read this, "the Commissioner of the Department of Transportation shall implement as a priority". Why should these bills keep coming in after the 10 year plan at the expense of all of our projects or many of our projects that we say will be our priority, so that the other programs raised further up down the list?

SENATOR MACDONALD: Is that a question?

SENATOR DISNARD: I didn't ask a question, I spoke in opposition.

SENATOR MACDONALD: Actually if you read the amendment, you would see that we have not made any changes that the Highway Department has not already agreed to make. In other words, right now the Highway Department has told us that they are going to do the Sagamore Creek at a certain period of time. This allows them when they change the plan when they are going to do it, we are not telling them to change it, they are changing it on their own. With Berlin, the same thing. We are saying it is that we appropriate $618,000 TAPE INAUDIBLE if you read the amendment, you would really love it. It says here that they promised under HB 1 that they would do the work in Gorham. So what we are saying is that we are taking your word, but we are putting a policy in there. We are saying, okay, we are going to spend $618,000, but, you have promised us that in HB 1 that you are going to do the work. We have done nothing in this amendment of the bill to change anything in the 10 year plan that they are not going to change. If you read this I think that you will find out what we are saying is that we want you to really look at the plans. We are not making any changes like you are suggesting. We are doing exactly what the Highway Department wants in the 10 year plan.

SENATOR DISNARD: Senator, would you believe that we have been told in our area with the Department of Transportation at the public hearings, when questions are asked and letters are written, why are projects such as bridges, repair of roads in our area, Sullivan county, not in Cheshire county, changed and put further down the list? And one of their answers is that the, "because the legislature told us that there are other priorities", I think every year.

SENATOR MACDONALD: In answer to your question, can you tell me in this amendment or the bill, where we are saying that we are moving any job ahead of another job?

SENATOR DISNARD: Yes.

SENATOR MACDONALD: Where?

SENATOR DISNARD: I read, "as a priority". When the legislature tells the Department of Transportation that the Sagamore construction, which I am not against, has a higher priority, that indicates to me that the legislature is telling the Department of Transportation that the other bridges that we don't tell them to put a priority on are not as important in repair requests.

SENATOR MACDONALD: To answer your question, if you look in the 10 year plan which you would have to have reference to, to know what it is all about, you would find out that that bridge was planned about 1997 at the same point that they are going to do the bridges that bypass. They are not moving it. They are just going to try and keep it where it is. They are not going to try and move it ahead of Claremont or any other position. Right now if you check the 10 year plan, that is where you are going to find it.

SENATOR DISNARD: If that happens and this bridge is constructed before 1997, do I have your word that you would put the highest priority on the bridge in Claremont that has been moved down the list?

SENATOR MACDONALD: Basically what we have here is . . . I still say what these bills are to make you Senators feel good that you have done something for the people at home, but you don't do anything. If you pass a bill that says that we are going to change the Sagamore Bridge to the position where the Bridge over Claremont is going to be done, there you have done something. But right now, all of these bills that we have had come through on these different projects are just to make people feel good. They don't do a darn thing as far as the 10 year plan.

SENATOR SHAHEEN: Senator Disnard, the Capital Budget committee shares your concern about moving projects around on the 10 year highway plan. We were quite concerned about the highest priority language in any of the bills, therefore, in working out the amendments on these bills, we went back to the DOT and confirmed our amendments with them to make sure that nothing that we were doing would move projects around on the 10 year highway plan. We did that with SB 177. And it's my understanding as Chairman of the Capital Budget committee as well as the understanding of the committee members that when we voted for this that it would not have any impact in terms of were this project is currently located on the 10 year highway plan.

SENATOR LAMIRANDE: I would just like to point out that part of the bill, the Cascade bridge, is in fact a red-line bridge, Senator Disnard. And it happens to be of the highest priority in the sense that lives can be saved here. And I would consider that the highest priority in my book anytime.

SENATOR DISNARD: Senator Lamirande, would you believe that the people in my area have the same concern and no one is suggesting in my area or this Senator, that a bridge that we need which I have mentioned before on this floor, should have a high priority because it is in that type of danger. I am just saying that what has happened in the past, the Capital Budget committee is now addressing.

SENATOR COLANTUONO: Senator Shaheen, I share the concerns of Senator Disnard and I think that it is important to note that the language regarding Senator Lamirande's piece doesn't have the priority language. We are only talking about the first piece which is the Sagamore

Creek bridge. But doesn't the first paragraph in this bill have a potential of raising the same problem that developed with the Route 101 extension? Where it was discovered that all of the money was being spent there and when taken to task on it? Commissioner O'Leary told us that, "well you told us that that road had a priority, so that is what I am doing". So aren't we creating the same problem with this bill?

SENATOR SHAHEEN: Well as I indicated, that when we prepared the amendment on these bills, this one and the two others that . . . both of which had highest priority language in them, which was the real issue. DOT indicated that it was the highest priority language that was the problem, that this was not a problem. And in order for it to create the kind of problems that you are talking about, we would have had to indicate where this project was going to go on the 10 year highway plan and that would have created the kind of problem that you are indicating. I don't think that the committee would have any problem with removing the language that says, "as a priority". Because essentially, that is what we did to get the amendment drafted. But if the body feels that you don't believe LBA and the DOT when they drafted this amendment, I have no problem with sending it downstairs and requesting that a new amendment be drafted and waiting until it gets back to have it done.

SENATOR PIGNATELLI: Senator Shaheen, I just wanted to know if you would mind removing those three words and then bringing it back?

SENATOR SHAHEEN: As I indicated, I have no problem waiting until an amendment is drafted if the rest of the body doesn't have a problem with it.

SENATOR ROBERGE: Senator Shaheen, on page three, "If the city of Berlin or town of Gorham begin interim repairs on the Cascade Street bridge the department shall reimburse the city or town for the cost of such interim repairs". I thought that I heard that the cities of Berlin and Gorham were supposed to raise a portion of that money? Does this take their portion out of this?

SENATOR SHAHEEN: It doesn't. I think that you are looking at the analysis. If you look at page two, number six the contingency, it says, "that sections three to five of this act shall not take effect if the appropriation providing in section three of this act is included in HB 1-A and HB 1-A becomes law". Essentially what this says is that there is currently a municipal bridge A going through the House that should have been passed today. That project includes money to deal with the Gorham bridge; however, there were some concerns on the part of the committee that if something happened to that bill between the time that it went through the House and the actual passage, that the money might not be there to deal with the bridge in which case we wanted to fund it. If that legislation is passed, then section three to five of this bill is null and void because the money is already in that other bill. That bill is from municipal bridge A and it includes a 20 percent match from the local community.

SENATOR ROBERGE: Oh, it does.

SENATOR BLAISDELL: Mr. President and members of the Senate, I would like to speak a little on this bill. I know the LBA staff has been fairly overworked, and they are all gone home by the way in case you don't know it, they are gone home. Couldn't we at least take the word of the LBA staff and the DOT and not remove those three words. I think that it is pretty clear, at least to me anyway, this is with the intention and I would ask Senator Pignatelli, would you consider withdrawing your motion?

SENATOR PIGNATELLI: I haven't made a motion, I merely asked a question of Senator Shaheen.

SENATOR BLAISDELL: I certainly don't want to shut you out on this, but I think that it was the LBA staff they have really been overworked and they have all gone home, so what do you want us to do?

SENATOR PIGNATELLI: I understand that and I would certainly be willing to withdraw my question. Do you think that if we told them that it had the highest priority, that they might be willing to do it?

SENATOR BLAISDELL: I can't speak for other Senators, but is seems to me that the Capital Budget committee, that they pretty much put it out in front of us and we should all understand it, and it should be done that way.

SENATOR ROBERGE: Question of the Chair: If in fact Senator Pignatelli wants that wording taken out, if this body agreed to that, that change could be made tomorrow perhaps and wouldn't necessarily have to come back for a review by the body?

SENATOR HOUGH (In the Chair): The problem, Senator Roberge, we are faced with at this point is that this is the last day for reports on Senate bills. When we adjourn today or recess, when we recess today it will be for the purposes of receiving and scheduling House Bills for hearings and all Senate Bills will have passed the Senate. Do I make myself clear?

SENATOR ROBERGE: But if we agree that we want that amendment, do we really have to see it in print?

SENATOR HOUGH (In the Chair): The problem is that we won't have the bill in our possession to send to the House after today.

SENATOR PIGNATELLI: I withdraw my request.

SENATOR HOUGH (In the Chair): The request was never requested.

Amendment adopted.

Ordered to third reading.

SB 178-FN, an act allowing the state to acquire rail properties for other transportation purposes, including recreational trails. Capital Budget committee. Ought to Pass With Amendment. Senator Baldizar for the committee.

2410B

Amendment to SB 178-FN

Amend the title of the bill by replacing it with the following:

AN ACT

allowing the state to acquire rail properties for other transportation purposes, including recreational trails and making an appropriation therefor.

Amend the bill by replacing section 3 with the following:

3 Appropriation. The sum of $1 is hereby appropriated for the biennium ending June 30, 1995, to the department of transportation for the purposes of this act. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

4 Effective Date. This act shall take effect 60 days after its passage.

SENATOR BALDIZAR: The committee is recommending the appropriation of $1 to keep this bill alive. What the bill will allow communities to do is to use vacant and not used railroad property for the land to be used for nature trails, conservation trails, bike paths, OHRV paths. There are some problems with it. We think that it is a good idea. The intent of the committee is to keep the bill alive, to work out some of the kinks that are in it and that is why we are appropriating $1 to that. We hope that you will go along with us. Thank you.

Amendment adopted.

Ordered to third reading.

SB 154-A, an act establishing a regional vocational education center in Milford and making an appropriation therefor. Capital Budget committee. Ought to Pass. Senator Wheeler for the committee.

SENATOR WHEELER: The Milford center would be the last center of the 20 vocational center concept. Last year you gave us $50,000 for planning and conceptual design money which the school district has accepted that money and then this March they voted to accept this money should it become available. The business community is behind us, the Chamber of Commerce is behind this project, the selectmen are behind this project, the School Board are behind this project. The Senate Education committee voted unanimously for this project and the Senate Capital Budget voted unanimously for this project. I would appreciate your support on this bill.

Adopted.

Ordered to third reading.

TAKEN OFF OF THE TABLE

Senator W. King moved to have SB 236-FN-A an act allowing a tax credit against the Business Profits Tax for certain businesses, taken off the table.

Adopted.

SB 236-FN-A an act allowing a tax credit against the Business Profits Tax for certain businesses.

SENATOR W. KING: We have an amendment that is being passed out that addresses Senator Colantuono's concern. I told Senator Colantuono that I didn't bring my reading glasses so that if he had any problems, I would ask the Senate President to read the thirty pages that were here, but he didn't seem to need me to do that. What you have before you is merely a reference to the federal IRS tax codes that deal with the specific definition of research and development. So that should clarify the issue of how research and development are defined. The assumption was that it would be the federal definition. I agree with Senator Colantuono, that was not clear, but this should now make it clear.

Senator W. King offered the following floor amendment.

2424B

Floor Amendment to SB 236-FN-A

Amend RSA 77-A:5, IX as inserted by section 1 of the bill by replacing it with the following:

IX. An amount equal to 15 percent of the investment for any business organization which invests in research and development. The tax credit allowed under this paragraph shall not exceed 5 percent of the tax due under this chapter before any credits under RSA 77-A:5 are taken into account. For the purpose of this paragraph an "organization which invests in research and development" means an organization which engages in research activities under section 41 of the United States Internal Revenue Code, as defined in RSA 77-A:1, XX.

Floor amendment is adopted.

Ordered to third reading.

BILL RECALLED FROM THE GOVERNOR

On motion of Senator Lamirande, the following entitled bill was recalled from the Governor:

HB 312, relative to protecting New Hampshire's heritage landmarks and establishing a review process.

SENATOR LAMIRANDE: Mr. President, I move that we recall from the Governor, HB 312 relative to protecting New Hampshire's heritage landmarks and establishing a review process. The bill amends a non existing statute and needs to be corrected before it can be signed.

Adopted

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

HB 53, repealing the credit to the Business Profits Tax for payment of the Nuclear Property Tax, repealing the nonseverability of the credit to the Business Profits Tax, and reinstating the Franchise Tax on electric utilities.

Senator Currier moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 98, relative to fees charged for processing and approval of residential mortgage loan applications.

SENATE CONCURS WITH HOUSE MESSAGE

SB 98, relative to fees charged for processing and approval of residential mortgage loan applications.

Senator Fraser moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 217-FN, clarifying the laws relative to guardianship and expanding a guardian's powers.

SENATE CONCURS WITH HOUSE MESSAGE

SB 217-FN, clarifying the laws relative to guardianship and expanding a guardian's powers.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 11, allowing 15-year-old persons to bus tables in dining rooms.

SENATE CONCURS WITH HOUSE MESSAGE

SB 11, allowing 15-year-old persons to bus tables in dining rooms.
Senator McLane moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 116, relative to reporting of treatment or assistance given to victims of domestic abuse and requiring physicians and hospitals to use domestic violence protocol as adopted by the department of justice.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 116, relative to reporting of treatment or assistance given to victims of domestic abuse and requiring physicians and hospitals to use domestic violence protocol as adopted by the department of justice.
Senator Podles moves concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 14, relative to package deals sponsored by liquor licensees.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 14, relative to package deals sponsored by liquor licensees.
Senator McLane moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 44, adding to the membership of the Emergency Shelter commission.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 44, adding to the membership of the Emergency Shelter commission. Senator J. King moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill sent down from the Senate:

SB 55, relative to accident and health insurance and health maintenance organizations.

RESOLUTION

Senator Roberge moved that the rules of the Senate be so far suspended as to allow all bills to be placed on Third Reading and Final Passage, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 2, an act redesignating a portion of New Hampshire Route 51 as New Hampshire Route 101.

SB 4, an act relative to a capital appropriation for state house repairs.

SB 35-FN-A, an act relative to a fund for organ transplantation and transferring responsibility from vocational rehabilitation to the Division of Human Services and making an appropriation therefor.

SB 68, establishing a challenge grant to restore and preserve the Nansen ski jump facility.

SB 73-FN-A, an act making an appropriation to promote international tourism.

SB 87, relative to capital investment, venture capital, capital access and the Business Finance Authority and capital formation; and relative to ambulatory care clinics.

SB 93-FN-A, an act relative to the National Science Foundation's statewide systemic initiatives program and making an appropriation therefor.

SB 94, an act relative to workforce development making an appropriation to the Department of Postsecondary Technical Education to support a pilot satellite program in Haverhill to promote north country economic development, establishing a customized training program for economic growth and making an appropriation therefor.

SB 103, an act relative to the construction of exit 10 on the Spaulding turnpike.

SB 137-FN-LOCAL, requiring municipalities to pay back to the state 50 percent of the moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes.

SB 139-FN-A, an act requiring the Department of Environmental Services to design a river basin planning and assessment program and making an appropriation therefor.

SB 143-FN-A, an act establishing a process for policy analysis of state agencies and making an appropriation therefor.

SB 145-FN, relative to liquor licenses for full service restaurants and to fees for supplemental cocktail lounge licenses for caterers.

SB 148-FN-A, an act making appropriations non-lapsing for regional vocational education tuition and transportation, and allowing the Kearsarge Regional School District to hold its 1994-1995 annual meetings in such places as the officers deem appropriate.

SB 154-A, an act establishing a regional vocational education center in Milford and making an appropriation therefor.

SB 156-FN-A, an act relative to the Portsmouth Naval Shipyard and making an appropriation therefor.

SB 158, an act relative to economic security, establishing a housing security guarantee program and continually appropriating a special fund, creating a bi-state commission for economic security and allowing the Housing Finance Authority to issue guarantees of certain home mortgage loans to help provide housing security.

SB 159, relative to technological development, relative to inventor assistance and making an appropriation therefor, and relative to a site for the Technology Research Park at the Pease International Tradeport.

SB 162-FN-LOCAL, an act authorizing the Sweepstakes Commission to establish video lottery games.

SB 166, requiring the Department of Transportation to continue with the Hillsborough reconstruction bypass project.

SB 169-FN-A, an act enhancing the capability of the Department of Environmental Services to perform environmental site assessment and remediation reviews required by lenders for the transfer of real property creating a groundwater management permit fee to fund such enhanced capability, and making an appropriation therefor.

SB 170-FN-A-L, an act relative to the distribution of meals and rooms tax revenue.

SB 176-FN-A-LOCAL, an act relative to kindergarten programs in local school districts and requiring an appropriation therefor.

SB 177-FN, an act relative to the Sagamore Creek bridge on U.S. Route 1 in the city of Portsmouth and the Cascade Street bridge between the city of Berlin and the town of Gorham and making an appropriation therefor.

SB 178-FN, allowing the state to acquire rail properties for other transportation purposes, including recreational trails and making an appropriation therefor.

SB 181-FN, an act abolishing the New Hampshire retirement system special reserve account.

SB 192-FN, an act relative to supplemental allowances for retirement system members.

SB 196, an act relative to the municipal economic development, establishing a committee to study regional planning and economic development, allowing towns to establish industrial development authorities, relative to bonding for economic development projects, allowing local governments to share tax revenues arising from economic development and establishing an economic development matching grants program and making an appropriation therefor.

SB 197-FN, an act implementing Title V of the Clean Air Act.

SB 200-FN-LOCAL, an act relative to the payment of medical benefits to certain Group II retirement system members.

SB 209-FN-A, an act relative to the children's health plan and making an appropriation therefor.

SB 213-FN-A, an act relative to advance reservations on rooms.

SB 215-FN, an act providing a cost of living adjustment for Group II permanent firemen members of the New Hampshire Retirement System.

SB 216-FN-LOCAL, an act relative to persons and estates chargeable for support.

SB 222-FN-A-L, an act relative to property tax relief.

SB 231-FN-A-LOCAL, an act relative to lead poisoning and control and continually appropriating a fund to the Director of Public Health Services.

SB 234-FN-A-LOCAL, an act relative to the return of revenue to cities and towns.

SB 236-FN-A an act allowing a tax credit against the Business Profits Tax for certain businesses.

Senator Cohen moved that the Senate be in recess until Tuesday, April 20 at 1:00 p.m. for the sole purpose of receiving House Messages and Enrolled Bill Reports.

Adopted.

Recess.

Out of Recess.

TAKEN OFF THE TABLE

Senator Lamirande moved to have SB 206-FN-A-L an act imposing a supplemental tobacco tax and beer and liquor tax to fund a mandatory kindergarten program, taken off of the table.

Adopted.

SB 206-FN-A-L, an act imposing a supplemental tobacco tax and beer and liquor tax to fund a mandatory kindergarten program. Ways and Means committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

2380B

Amendment to SB 206-FN-A-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT
imposing a supplemental tobacco tax to fund
a mandatory kindergarten program.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose.

I. The general court finds that the state has an obligation to educate its citizens. As far back as 1795, Governor George Clinton of New York complained that education was "confined to the children of the opulent" and urged state aid to common schools.

II. Human intelligence develops most rapidly in early childhood. The human newborn has a number of adaptive reflexes, including grasping, rooting, sucking and Moro reflexes. Newborns show immediate evidence of learning and appreciating the consequences of their actions. It is estimated that 50 percent of adult intelligence is developed by age 4 and 80 percent of adult intelligence is developed by age 8.

III. Child psychologist Jean Piaget theorized that intellectual growth occurs through a combination of assimilation and accommodation. In addition, intelligence reflects the combined effects of both heredity and environment on development of intellectual abilities.

IV. Therefore, the general court finds it to be of paramount importance to the state and its citizens to begin education at the kindergarten level.

2 New Subparagraph; Kindergarten Fund. Amend RSA 6:12, I by inserting after subparagraph (zz) the following new subparagraph:

(aaa) Moneys derived from the supplemental tax under RSA 78:7, II, which shall be credited to the kindergarten fund under RSA 198:34.

3 Supplemental Tobacco Tax; July 1, 1993. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed.

I. A tax upon the retail consumer is hereby imposed at the rate of 25 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state.

II. In addition, a supplemental tax is imposed upon the retail consumer at the rate of $.05 for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state, for the purposes of funding kindergarten pursuant to RSA 198:34 - 198:36. Taxes collected under this paragraph shall be deposited by the state treasurer in the kindergarten fund established in RSA 198:34.

III. The payment of the [tax] ***taxes under paragraphs I and II*** shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

4 Supplemental Tobacco Tax; January 1, 1994. Amend RSA 78:7, II to read as follows:

II. In addition, a supplemental tax is imposed upon the retail consumer at the rate of [$.05] ***$.10*** for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state, for the purposes of funding kindergarten pursuant to RSA 198:34 - 198:36. Taxes collected under this paragraph shall be deposited by the state treasurer in the kindergarten fund established in RSA 198:34.

5 New Subdivision; Kindergarten. Amend RSA 198 by inserting after section 33 the following new subdivision:

Kindergarten

198:34 Kindergarten Fund Established. The state treasurer shall establish a kindergarten fund in the treasury. The state treasurer shall deposit into this fund the full amount of the taxes collected under RSA 78:7, II. The fund shall be nonlapsing and continually appropriated for the purpose of funding a state-wide kindergarten program.

198:35 Distribution of the Kindergarten Fund. On or before June 30, 1994 and each year thereafter, the department of education shall prepare a budget estimating the costs for kindergarten for the fiscal year next following. Beginning on July 1, 1994, the moneys in the fund established under RSA 198:34 shall be distributed to the school districts in 3 equal payments on July 1, November 1, and March 1, of each year. Distributions shall be made on an equal basis, based on the average daily membership of kindergarten-aged pupils resident in each district. If there are insufficient funds in the kindergarten fund to fully fund the department's budget in any fiscal year, the deficiency shall be made up from undesignated general fund revenues.

198:36 Authority Commissioner; Rulemaking. The commissioner of the department of education shall:

I. Administer the fund established in RSA 198:34.

II. Establish a state-wide program for kindergarten in time for the 1994-1995 school year.

III. Adopt rules under RSA 541-A necessary to the proper administration of this subdivision.

6 Effective Date.

I. Section 4 of this act shall take effect January 1, 1994.

II. The remainder of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill imposes a supplemental $.05 tobacco tax as of July 1, 1993, to fund a mandatory kindergarten program. The supplemental tax is increased to $.10 on January 1, 1994. If there is a deficiency in the tax revenues required to fully fund the kindergarten program, the shortfall is to be made up from general fund revenues.

Standards for the kindergarten program shall be established by the commissioner of the department of education.

SENATOR LAMIRANDE: Mr. President and members of the Senate, this morning our Senate President took a bold step to provide equal education to all the children of New Hampshire. By adding his name to the list of plaintiffs in the suit, he showed that he cares deeply about our children and their future. He also showed that he is deeply troubled by the funding of education in this state. To quote President Hough, "I have and will not take the shortcomings of our system for financing public education as an excuse to shirk my responsibilities to do everything in my power to mitigate its consequences, nor will I, and nor should you". So today, once again, I will ask you to support public kindergarten in our state. Last week you heard me tell you why I feel so strongly about having public kindergarten for every New Hampshire child. By the tone of my voice then and now, you know how strongly that I feel. I don't buy the argument that we can't afford kindergarten, we can. You and I know that it costs our state far more in the long run in special education costs and in work force training in our ability to attract high tech companies, than it does to fund public kindergarten at all. Yet I have not seen the political will in this legislature to put our money where our beliefs are. The amendment gives us an opportunity to fund kindergarten. I have a floor amendment that I will present, but I would ask that you would vote on the bill as amended by the Senate the way that it stands now. I thank you for listening to me.

SENATOR COLANTUONO: Senator Lamirande, could you tell us, for those who might not remember it from last week or didn't know the information, how much will it cost to implement the mandatory kindergarten program?

SENATOR LAMIRANDE: It costs approximately $39 million.

SENATOR COLANTUONO: How much will be raised by the additional five cents going up to ten cents additional tax on cigarettes?

SENATOR LAMIRANDE: Well the original charge was 25 cents and that cutback to five cents for the first year with an additional five cents for the following year. Twenty five cents would have pulled in approximately $41 to $42 million based on the figures that we had received on the amount of cigarettes sold.

SENATOR COLANTUONO: So how much would the five and ten cent tax bring in?

SENATOR LAMIRANDE: My mind can't calculate that fast, Senator. But I would say about $20 million.

SENATOR COLANTUONO: I want to make sure that everyone understands that under this bill, isn't it true that the additional money, the shortfall, will be made from general fund revenue and that is by your calculation, $19 million?

SENATOR LAMIRANDE: Yes, Senator, but let me just explain one step further and I will yield to my colleague Senator McLane. But the statement that I would like to make is: that kindergarten is already included in the Foundation Aid money. That Foundation Aid money comes from the Augenblick formula which is based on lottery money. It is already included in there. It is just that the state does not take advantage of it or the towns do not take advantage of it. So part of that money would be coming out of there and you may get nothing coming out of the general fund.

SENATOR COLANTUONO: Does that mean that the new school districts who will be getting this new additional Augenblick money who are going to have kindergarten now, but who are going to have kindergarten after this bill passes but don't have it now, are in effect going to be taking money away from the other school districts who already have kindergarten because those school districts will be getting less Augenblick money?

SENATOR LAMIRANDE: No, Senator. When anyone presents a budget from the Department of Education or the School Department, the number of children that were to take advantage of kindergarten in every district is included in the formula that they use that distributes the amount of money that they receive.

SENATOR LOVEJOY: Mr. President and members of the Senate, this is more of an issue than whether or not we should have kindergarten in the state of New Hampshire. This is an issue, it is an economic issue. It is one that affects the state or could affect the state greatly. It could also penalize the state in greater proportions now than the Senator from District One's conception that we are being penalized with 40 percent of the state not having kindergartens. Because cross border sales now of cigarettes, the impact on cross border sales from Massachusetts in the light of the 25 percent increase there, as of January 1, 1993, just gone by, it is too early to determine the full impact of that difference. But the preliminary results are that sales will be up substantially. Not only for cigarettes, because they cross for other reasons, and when they do come over

for cigarettes they spend money for other things such as gasoline, wine, meals, beer and lottery tickets and various other things. As a result from the increased traffic from Massachussetts and from the other border states. Now the grocers conducted a study by Price Waterhouse, and they expect that the additional revenues from the sale of cigarettes alone will mean an additional $11 million annually to the state of New Hampshire without an increase in the tax. Those aren't New Hampshire people that are bringing in the additional $11 million, those are people crossing our borders. Since it has been a long time since we've had this size of a differential with Massachusetts, shouldn't we wait until next year to determine exactly what the benefits of that differential might be? Businesses in New Hampshire will suffer greatly from a ten cent increase per pack. The ten cent additional pack will either come out of the profit margins of the convenience stores, the mom and pop groceries or the super markets or out of the pockets of the New Hampshire people. It isn't going to come from anyplace else. We have already raised the cigarette tax by eight cents in the last three years and the state now has the opportunity to benefit from those increases from those increased sales from those people who cross the borders and without raising the tax again. During the recession, the period that we have been going through, are still going through, the convenience store owners and grocers have had as many problems as those of us in the real estate business or any other business. The increased sales or greater profit margins they will receive from the tax increase in Massachusetts is an opportunity to get back some of that money, get back on their feet to hire additional people, to pay down debt, to pay money to improve their facilities. The Price Waterhouse study estimates that approximately 600 new jobs will be created by the 25 cent differential with Massachusetts. All of these things will help New Hampshire recover from a bad economy and we can't do that if we don't take in the money. In addition, why do we want to place higher taxes on New Hampshire residents anyway? Although we are now a little higher than Vermont on the cigarette tax, they have a 20 cent tax per pack and we have a 25 cent per pack, Vermont does not intend to raise its taxes here. If we go up ten cents, then the Vermont borders will suffer even greater economic harm than they are suffering now. We understand that Vermont may raise its tax next year. We should watch them and we will always certainly watch them. The House had this bill before them and considered a ten cent per tax hike this year and they defeated it, 250 to 104. They decided that perhaps it's best to help the small businesses and the small grocers and those in the border areas by not raising the tax. And I submit to you that we should put this behind us and do the same. Thank you.

SENATOR HOLLINGWORTH: Senator Lovejoy, you talked about the cost to the state. I was wondering if you had studied the statistics because of the loss of tobacco. I wondered if you have looked at the statistics that have been compiled as to what it cost the state for the cigarette smokers and their health ill effects, both in premature births and all of the other avenues of what it costs us state wide for health effects due to cigarette smoking?

SENATOR LOVEJOY: No, of course I haven't, Senator Hollingworth. But let me tell you that we are not talking about the evils of cigarette smoking. I am not a smoker and I haven't been for 20 years. I am going through a trial with smoking in my family. I personally don't like cigarette smoke around, but that is not the issue. We can probably agree with each

other all afternoon on that issue, but what we are talking about is the economics of whether or not a cigarette tax should be raised in New Hampshire and effects on the residents.

SENATOR HOLLINGWORTH: In fact, Senator Lovejoy, the statistics by all of the experts say that with an increased cost in tobacco that there is a decline in cigarette smoking. And in fact, the polls also indicate that New Hampshire residents, by far, support a tax on tobacco. Are you aware of that?

SENATOR LOVEJOY: Well we must be reading different things, Senator; however, I will say this, that your district as well as those districts along the Maine and Vermont border, find this to be a very serious threat to these businesses and they are looking to us to protect them.

SENATOR HOLLINGWORTH: Since you brought that up, Senator Lovejoy, I was wondering if you would like to know how many people have contacted me in regard to a cigarette tax? Do you know how many have contacted me?

SENATOR LOVEJOY: I have no idea how many have contacted you.

SENATOR HOLLINGWORTH: One in opposition, the rest were in favor.

SENATOR SHAHEEN: Senator Lovejoy, I want to make sure that I have got this straight. As I understand the amendment that we are about to vote on, it would add a five cent tax on cigarettes in the first year and a ten cent tax on cigarettes in the second year, is that your understanding?

SENATOR LOVEJOY: That is not so. What I understand is that it would raise a five cent tax now and a five cent tax in the future.

SENATOR SHAHEEN: And you are pointing out that in Massachusetts that they are raising the tax on cigarettes about 25 cents?

SENATOR LOVEJOY: I am pointing out that we have a 25 cent advantage over them.

SENATOR SHAHEEN: So that if this bill passed, we would still have a 20 cent advantage over Massachusetts?

SENATOR LOVEJOY: For a period and then that could change.

SENATOR SHAHEEN: And then are you suggesting that even given those advantages that people from Massachusetts would still fail to come to New Hampshire stores to buy cigarettes because it would not be cheaper anymore?

SENATOR LOVEJOY: I am suggesting that Price Waterhouse in a study for the New Hampshire grocers said that it would cost us $11 million in related sales, yes.

SENATOR SHAHEEN: Even though we would still have an economic advantage?

SENATOR LOVEJOY: That is what they said.

SENATOR SHAHEEN: Actually this is a would you believe, Senator Lovejoy. Would you believe that for every dollar that we spend on the cost of kindergarten that it saves us nine dollars in the long-term cost for those children, and that is a figure that was developed by the Economic Development committee of the Fortune 500 companies in this country.

So I would contend that the $11 million that it may cost us today is going to be worth a whole lot more in the long-term in the money that we are going to save from those kids who get to go to kindergarten.

SENATOR LOVEJOY: I guess that was a question. I guess my answer would be, yes, I would believe the same that you would believe, certainly. But I would vote for kindergarten with the change before my community.

SENATOR MCLANE: As Chairman of Ways and Means, I wanted to clear up a few misconceptions, maybe. I can remember 23 years ago when I was first in the House Ways and Means committee and we had a bill to put cigarettes up from seven cents to eight cents a pack and we debated for about a half an hour in the committee, then finally the other woman on the committee said, "what is the present rate in New Hampshire"? and there wasn't a soul on the Ways and Means committee who knew, but we did have a good debate up until that point. I think that the point that I want to make clear to Senator Lovejoy, he said, "how can you say that it is going to be $20 million when if it is at 25 cents it is going to be 40"? The point is that these came from AD Little studies back 23 years ago, having been updated by Price Waterhouse and such and it often time depends on whether it is the grocers buying the study or the medical society. But the point is that when you raise the rate, you don't lose the money until you go to a certain point. If we went up 15 cents, then it would start going down and that is why when you get to 25 it is at $40 million. But as you are going up on the curve, particularly another five cents, it doesn't make that much difference to people, but to put on the hat of the medical society, it makes a lot of difference to young kids. That every penny that you put up the tax, a few more kids say, gee this is too much money, and they stop doing it. One of the things that we discovered in that study years ago was that if you put it up five cents the grocers leave it at five cents, but if you put it up one, two or three cents, they'll put it up to five anyway just to sort of even up their change. So we have thought long and hard about five and five. But our main point is that if you want kindergarten in this day and age, and we do, you have got to think of a way to pay for it and this was the quickest, easiest, and most helpful way. I don't think the only issue is the grocers on the borders, the grocers on the borders aren't going to be ruined by five cents, but there are plenty of kids and plenty of people that have a health interest in fewer people smoking.

SENATOR LAMIRANDE: Senator McLane, would you believe that our children are expected to take a back seat and we are comparing New Hampshire to our bordering states that already have kindergarten? And would you further believe that the decent thing to do is to provide our children with the education that every other state right now already has?

SENATOR MCLANE: Thank you. I would believe that. And I want to tell you a story about that cute little boy who was here last Thursday who so enjoyed being one of the pages that he came back and stayed the whole afternoon. He lived in Dover and they had no kindergarten. When he was ready to go to first grade he moved to Maine where they had kindergarten. And because he hadn't had kindergarten in New Hampshire, he had to go back to kindergarten. So he very cutely told me, "I am 13 and I am in with a bunch of 12 year olds and the reason is I didn't have kindergarten in Dover". So that is the sort of story that you hear everyday.

SENATOR LOVEJOY: Senator McLane, my mind is slippery as I get older and sloppy today certainly . . .

SENATOR MCLANE: Try mine.

SENATOR LOVEJOY: So I would ask you again, how much of the state does not have kindergarten now?

SENATOR MCLANE: The last figure that I knew was 40 percent, but it is going up, Berlin has lost kindergarten, Franklin has lost kindergarten, so it is 40 and moving. I have a list of all of the towns that have kindergarten and it is an amazing number. I guess that is all that I could tell you. It is well over 25 percent.

SENATOR LOVEJOY: Those communities that now find that within their budgets to fund kindergarten and have made that decision locally, what would happen to them if we have a state funded program?

SENATOR MCLANE: That is the important point and that is why it is so expensive. Because you can't give it to some communities and not give it to everyone. The way that the fund would work is that you would distribute under the Augenblick formula, the money for kindergarten, the increase in pupils, and that would mean that those communities that are rich and already have kindergarten would receive some and the other communities that don't have kindergarten would receive proportionally more.

SENATOR LOVEJOY: Isn't this then a question of increasing state funding to education to fully fund a kindergarten? And isn't it true then as Senator Colantuono asked Senator Lamirande, isn't it true that should the cigarette tax at any time fall short of this goal then we are voting to increase the general budget by that amount of shortage?

SENATOR MCLANE: This is a very important point. Senator Disnard did not feel that it was sufficiently answered on Thursday. In the bill it says that we fund kindergartens and if the cigarette fund is not enough that the difference would be made up in the general fund, but that is not true unless it is in the budget. It is possible as with many other bills that we have passed in this place, that you have a grand idea, but until it is in the budget it is not a reality.

SENATOR LOVEJOY: Of course I don't have the longevity or the experience here to be able to . . .

SENATOR MCLANE: You are younger than I am.

SENATOR LOVEJOY: Well, I don't know if I am younger than you are, but I am newer. But, when I read the bill it says to me, "if there are insufficient funds in the kindergarten fund to fully fund the department's budget in any fiscal year, the deficiency shall be made up from undesignated general fund revenues".

SENATOR MCLANE: We have many bills that say this. In fact, the law says that we should be giving eight percent of state funds to local education, we give four. You can ask Senator Hough who has been through the budget battles many, many, many times. What happens is that we get to the last days and there is a good easy hunk to take out. So what I am saying is although that is the wish of the legislation, that the reality will come in the budget.

SENATOR LOVEJOY: My final question is have you given any thought to the increased Business Profits Tax revenue that the state of New

Hampshire will gain from increased sales of cigarettes and other type shopping that cigarette shopping brings, how much that will increase our state coffers to fund our budget?

SENATOR MCLANE: I have not. I guess perhaps it is an increase that you mean, the increase that comes from the fact that Massachusetts has gone to 56 cents? We have merely put that in the general fund and that has gone up a couple of million every six months because there are more sales. But I think that it certainly is not something that we planned to do in this bill.

SENATOR LOVEJOY: Thank you.

SENATOR PIGNATELLI: Senator McLane, would you believe that you could care that there be kindergartens in this state very much and not support this bill?

SENATOR MCLANE: I think that I have heard that argument before and I am very sorry. I can imagine that someone coming from Nashua might feel a little pressure from the grocers. I feel pressure from the doctors and the kids.

SENATOR PIGNATELLI: Senator McLane, would you further believe that one of the reasons that I voted for Senator Currier's video poker bill last week which was a very difficult decision for me and one for which I have taken a lot of grief over. It is that my belief is that we ought to be funding education and funding kindergarten by fully funding the Augenblick formula which his bill would do and I am hopeful that that will be the way that we fund education?

SENATOR MCLANE: That is a decision that you have made and far be it from me to criticize. I can't imagine making that decision and not making a decision to do what is best for kids and what is best for everybody's medical health for the same reason. I find it very difficult to understand.

SENATOR W. KING: Let's take a common sense check here for one second. On the Massachusetts border, the Massachusetts tax is 50 cents and New Hampshire's tax today is 25 cents. That is a sufficient incentive to go across the border to purchase cigarettes. A five cent addition to the New Hampshire level is not going to create a disincentive. Even a ten cent difference is not going to create a disincentive because there is a significant enough difference. Now we go over to Vermont where the difference is relatively small, 21 cents versus 25 cents. If you take the Vermont sales tax and add it on to that 21 cents, in fact there is almost no differential. If you add five cents on there is a very small differential per pack, probably somewhere in the realm of three cents. Now if it is going to cost you 25 cents to turn your motor on, on one side of the Connecticut River, and go across the river to New Hampshire to buy your cigarettes and get them three cents cheaper there, you are going to have to buy a lot of packs of cigarettes before it makes economic sense for you to cross the river. This bill is a bill that relates to the economic growth of the state of New Hampshire in a very positive way. Because we heard time after time, speaker after speaker, at the Economic Summit whether they were talking about work force development or technology or anything else, they stressed the need for education and stressed the need to start our kids early. If we were going to have a work force to compete against the Japans and the Germanys of this world, we have got to have kindergarten for every child in the state of New Hampshire and this is a painless way for us to provide that. I urge your support of this bill.

SENATOR DISNARD: You have heard some eloquent discussions about the border communities. This weekend I went to six stores in the border communities in my area, I asked customers and I spoke to the proprietors. Senator King has indicated that they wouldn't come across the border from Vermont into New Hampshire to save a few cents on the cigarette tax. He is right. But that isn't what you see these people purchasing and that isn't what you hear from these small stores. What you hear is that they buy beer, they buy soda, they buy some food and they buy many other items. The Vermont trade is the life blood for some of the small stores in my area and in Wayne King's area and all up and down the Connecticut River. So I appreciate what was said by Senator Pignatelli on the Video Tax. We will lose on the Business Profits Tax, we will lose on the Beer Tax, we will lose in many other areas, because when they come over to shop, they go to MacDonalds, they go to Burger King, they go to the Kentucky Fried Chickens, they go to many other places, so they don't come over just to buy what you think that they are buying. Now in our area, Hinsdale, they come over for the Wal Mart, a Wal Mart is being built in our area. They will come over and visit these small stores at the same time. So I think that we ought to think of the life right now in these small stores also.

SENATOR SHAHEEN: Senator Disnard, I live in a border town, too, so I certainly acknowledge what you say when you say that people come up here and they go to Wal Mart in Somersworth and they go to the various Sams and places like that in the Seacoast area and they buy much more than just cigarettes. Now the question that I have for you is that are you suggesting that if we raise our cigarette tax then that means that people are not going to come up to those stores to buy all of those other items that they come for?

SENATOR DISNARD: No ma'am, what I am trying to say is that when they come over, whether they are going to go to Wal Mart or where ever, even though they can buy the Wal Mart items less expensively, but still when they come across, hit the small stores, then they buy their cigarettes, then they buy their beer. These small stores really benefit. I think that the state benefits from the taxes from the beer and the other items. But I think that it would be a mistake. I think that the video would take care of the $40 million which is estimated for the schools, whether it is by per pupil or whether it is by the Augenblick formula and the others will keep our income from our Business Profits Tax if they should go to a restaurant and also help with the income from the beer.

SENATOR SHAHEEN: I don't disagree with that. I guess the point that I am still having trouble with is the contention that if we still have a better than ten cent advantage on cigarette taxes that people from Massachusetts coming up here to buy at our stores are not still going to stop at those small stores and buy those cigarettes, because they are still going to be cheaper here than they are going to be at home.

SENATOR DISNARD: I can't argue that point, I am just concerned with the Vermont border in my area, I am not concerned with the Massachusetts . . . you may be right, and I know that it is not right to TAPE INAUDIBLE.

SENATOR W. KING: Senator Disnard, this is a follow up on what Senator Shaheen just asked you and now dealing with the Vermont border. Would you not agree that the decision that people make about whether or not to go from one side of the river to the other to purchase products is not driven necessarily by the cigarette tax?

SENATOR DISNARD: No, I don't agree with that. I think that's one reason that at the same time that they are buying the beer, they are buying the other items. For example, I go across the river to fish and I make sure that I buy my cigarettes in this area and my beer in this area to save money and the people coming over do the same thing.

SENATOR W. KING: Senator Disnard, why do people cross the border? This is what we are trying to ask you. Why do people cross from Vermont to New Hampshire to buy beer?

SENATOR DISNARD: I wish that I had thought of that earlier, thank you for helping me. In my area we have about 1200 people, we have the other areas where they come in to work. It is more convenient for them when they come in to work or when they are going home to buy their products, it is convenience, but they know that it is cheap. Thank you very much.

SENATOR W. KING: I have one last question. Senator Disnard, if there is only a two or three cent difference in the cost of a pack of a cigarettes on the New Hampshire side and the individuals come across from Vermont because there is no sales tax in New Hampshire to buy other products, don't you think that while they are in the store they are willing to pay a couple of cents more for a pack of cigarettes?

SENATOR DISNARD: They might not be in a store, because many, their first idea is that they want to light up.

SENATOR COLANTUONO: Senator Lamirande, I have a concern about what we are saying in the bill when we say that, "the department will prepare a budget for the cost of kindergarten", does this mean now that we are telling all of the towns and cities that they have to have kindergarten. Does this mean that we are telling them how much they can spend on it or does this mean that we are giving them carte blanche to do whatever they want and then footing the bill?

SENATOR LAMIRANDE: Senator, it doesn't mean that we are giving them carte blanche to do whatever they want. They would fall under the same procedures as is now being done in the education system. The same way that you will find with the first grade up to the twelfth grade, kindergarten would just be incorporated into that.

SENATOR COLANTUONO: But isn't it true that in any town the school district sets the budget so the town decides how much that they want to spend. Are we having a new and different system for kindergarten?

SENATOR LAMIRANDE: No, we are not, Senator, because of the fact that right now, every pupil that every town needs money for, including kindergarten children, are included in the formula that funds education. So it is nothing that . . . it is already there, but it is not being utilized.

SENATOR COLANTUONO: Well isn't it true, Senator, that we do not fund grades one through twelve, the local communities fund the bulk and the majority of that and they decide how much they want to spend and how they are going to spend it?

SENATOR LAMIRANDE: Most of that comes out of your property tax dollars. The deficit comes out of the Foundation Aid money. But that Foundation Aid money and the amount that is funded for all of education would now be equalized. In other words, kindergarten would just be another class included in there.

SENATOR COLANTUONO: I understand. Final question. I just want to know how the state is going to determine how much each various community . . .

SENATOR LAMIRANDE: Needs.

SENATOR COLANTUONO: Needs or it will be allowed to spend?

SENATOR LAMIRANDE: That is still based on the same formula that they are using right now. In other words, the school department that presents the budget, from what I understand.

SENATOR BALDIZAR: Senator Lamirande, I am still unclear about the funding. Now I come from Nashua and we were the first community in the state to have kindergarten and I am proud that our local community voted to support kindergarten. And I am one of those people who believes that that is the right thing to do; however, I am also from a community that receives zero dollars under the Augenblick formula. I represent other communities in my district that also receive zero dollars. We have chosen to support kindergarten in our community, how much will Nashua will receive from the bill that you are proposing, from the amendment, because we already do have kindergarten, what will our benefit be if I vote to support this bill? How much money will we get because we currently don't receive anything and you keep talking about it will be the same system as the Augenblick formula and we're already getting zero?

SENATOR LAMIRANDE: I would like to defer you to Senator McLane.

SENATOR MCLANE: I think that this is a very important point that needs to be discussed. The whole reason that the state of New Hampshire isn't saying, 'do kindergarten' is because of article 28-A. We no longer can tell any community to do anything unless we pay for it. So what I assume that the state board would do is to take the average tuition which is $5,002 per pupil, divide it in half because kindergarten is only half a day, morning or afternoon, and give that money to the school districts and that would be the budget. Now that is what you have to assume that they would be paying the cost, the average cost, or otherwise they couldn't mandate it.

SENATOR BALDIZAR: My question, Senator McLane, is and I am still unclear on what amount of money will the Nashua school district receive, because we already do have kindergarten and we already do not receive money under Augenblick? What guarantee do I have that if I vote for this state wide kindergarten? I do believe that all kids should have the advantages that my children have. My children came from a state where we did have kindergarten and I feel that each child in New Hampshire should have the opportunity also.

SENATOR MCLANE: This is the difference between this and the Augenblick we are mandating kindergarten. Because we are mandating kindergarten we have to pay for it. So Nashua will get the number of kindergarten pupils, probably, and I am saying multiplied by $5,002 and divide it in half because it is kindergarten and that will probably be the education fund.

SENATOR BALDIZAR: Will it be based on per capita, based on per student?

SENATOR MCLANE: Per student, because that is what we are saying.

SENATOR BALDIZAR: Can you show me where I can be guaranteed that we will receive the benefits?

SENATOR MCLANE: I am saying that it would be unconstitutional not to give Nashua the money to pay for kindergarten. It is not like the Augenblick which doesn't give it to rich communities.

SENATOR SHAHEEN: Senator McLane, would you believe that if you look on page 246 of the Senate Journal, that in the amendment to SB 206 that it points out under the section that says, "kindergarten" about half way down the page, "distribution shall be made on an equal basis based on the average daily membership of kindergarten aged pupils resident in each district". As I read that, does that not mean that it will be distributed on a per pupil basis as Senator Baldizar was concerned?

SENATOR MCLANE: Yes. I believe that it is very clear and I am just trying to think how we can make it clearer to everyone. I think the funding . . . I guess I am looking at the words just above that that talk about funding a state wide kindergarten program and if it is state wide, it includes everyone in the state.

SENATOR LOVEJOY: Senator McLane, if it is true of what you just said, then you are not talking Augenblick, that in fact violates Augenblick.

SENATOR MCLANE: It is a fund called the Kindergarten Fund Established. It is established for the purpose of funding a state wide kindergarten program. It is very clear that because some communities have kindergarten and some don't that there would be one other alternative and that is to just fund the ones that don't, but you know that that wouldn't be fair and I know that that wouldn't be fair. So the assumption which I think is very clear is that the state wide kindergarten fund would be divided per pupil and would go back to those communities and would fund kindergarten which we are mandating and which we can not mandate unless we pay for it.

SENATOR COLANTUONO: Senator McLane, I want to make sure that one thing is clearly established one way or the other, because you said that you would assume that the department would send each student one half of what the average fee for a student would be. But you also said early in your debate, that if there is not enough money in the fund it wouldn't be funded.

SENATOR MCLANE: No I didn't.

SENATOR COLANTUONO: Okay, I believe that you said that, "we do this all of the time. That we say in law that we should provide a certain amount of money and if it isn't there it just doesn't go" and in this case, since this is a 28-A mandate, I just want to make sure that everyone in here understands that we would have to fund this from the general fund, any difference between the cost.

SENATOR MCLANE: You take the average cost over the state and fund that. I would agree with you.

SENATOR W. KING: Senator Lamirande, just to clarify Senator Baldizar's question, so that there is no question about the intent of this legislation. It is the intent of this legislation to pay for every child, to pay a portion of the cost at least, for every child in kindergarten in the state of New Hampshire irrespective of whether or not that kindergarten exists today or not.

SENATOR LAMIRANDE: I agree. Exactly. The purpose was that every town and every child that needed kindergarten, would have the advantage of kindergarten whether or not the town had kindergarten now and that would be distributed equally to all towns.

SENATOR CURRIER: I thought that the purpose of taking this off of the table was to offer an amendment, not the original bill, and if that is the case what is all of this debate over?

SENATOR HOUGH (In the Chair): The parlimentary situation is this, having removed the bill from the table, we must dispose of the committee report. We are discussing the committee report. The committee report is ought to pass with amendment and we are speaking to the amendment and that is what the debate is about. At the conclusion of Senator Blaisdell's remarks, not seeing any other members wishing to speak, I will take the question to limit debate and we will vote on the committee report which is the committee amendment.

SENATOR CURRIER: And then another amendment will be offered that guts the whole thing from cigarettes to something else, is that correct?

SENATOR HOUGH (In the Chair): The bill will be before you and opened to amendment.

SENATOR BLAISDELL: Mr. President and members of the Senate, most of the parlimentary inquiries that I was going to make have been answered already. It has been mentioned on this floor that this money is not sweepstakes money, and I want you to understand that, this is general fund money, let's take them apart here. I have to wear another hat and, Senator Lamirande, I have to commend you for what you are trying to do, but there is no Senator in this room that doesn't think that children are our greatest natural asset, they are the greatest natural asset that we have. I have to wear the hat as the Senate Finance Chairman, I have to look at what is coming down the line. I have to look at what you are going to do, Senator McLane. Whether or not you are going to raise the level of poverty from 150 percent to 185 percent. I really have a problem with this money being dedicated that way, to just kindergarten. I think that the legislative process should go forward. I think that if you want to raise revenue and you want to agree with a five cents tax on cigarettes, it has been spoken to by people on the border. I happen to disagree because I think that the revenue would come in and I am in the southwestern part of New Hampshire and I have had one thing handed to me by the grocers and that was out in the corridor and nobody else has called me. I just caution you on what you are doing. I know that this is probably a turnaround for me, but you have to wear another hat when you look at the revenue picture in New Hampshire and the budget process that is coming down. We have some serious problems still to be able to fund in the budget. We just got a $30 million bill yesterday for the state employees, I think that is great, we have to talk about that, we have to look at that, but we have to fund it. We also have to fund Meals on Wheels that you people voted for and want. You also have to vote for that transportation money which is another $170,000. You also have to vote, by the way, to put back into the budget another $1 million in indigent defense. I don't want to go through the whole budget process for you. I have been looking at, I know what the House has sent over to us, there are some serious problems here. I caution you on taking this money and dedicating it in this way. Great, I would love to have a kindergarten in every town in the state of New Hampshire. I would love to be able to fund it. But I want to tell you something, when you talk about children in our state, Senator

McLane, you and I wrote the children and poverty report a few years ago and you know very well from writing that report and putting it out that there are children in this state that don't have soap and water. As I told my granddaughter, read the report, Laura, and she said, "I did grandpa, and you are wrong, people don't have Spaghetti O's five days a week", she didn't believe that kids on welfare in the state of New Hampshire don't smell the same as she because they don't have the soap and water and things like that that they need every morning. So we have to set some priorities. I would rather, Senator, put money into your 185 percent, because if you put that investment into those children that are on welfare today and AFDC, and if you do that, you are going to show them something a little bit better in life, just a little bit better and then maybe they will want to get off that welfare or maybe you will want to put some money into the AFDC programs that will give those women who have those children that can go out into the private sector and get a training. Think about that, get a training so that she could bring herself up to the poverty level and get off of it. It is about nine or ten dollars an hour that that woman has to make to get off of the poverty level. So then she would be able to show those young children that there is something better in life. Kindergarten is a wonderful thing, it is a great thing, but please before you vote for this give us the opportunity, please, in the budget process to set some priorities. If you want to raise the tax five cents each way, I am not going to argue with you. But don't spend the money on me until I get the budget process down and can bring it back into you people so that you can make a decision. Senator Lamirande, I don't mean to criticize you. I think that what you are trying to do is a wonderful thing. But really, until you know what is happening to us in this state and what is going to happen to us after medicaid goes out the door in a couple of years, where that revenue is going to come from? You dedicate it to this fund here and you are never going to get it back. So I am asking you to please think about what you are doing and I will accept your vote, how you will do it.

Question is on the committee amendment.

A roll call was requested by Senator Lamirande.

Seconded by Senator Wheeler.

The following Senators voted Yes: Lamirande, W. King, MacDonald, McLane, Russman, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: Fraser, Lovejoy, Currier, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, Podles, Barnes, J. King, Delahunty.

Yeas: 9 - Nays: 14

Committee amendment fails.

Recess.

Out of recess.

Senator Blaisdell moved to have SB 206-FN-A-L an act imposing a supplemental tobacco tax and beer and liquor tax to fund a mandatory kindergarten program, laid on the table.

Adopted.

LAID ON THE TABLE

SB 206-FN-A-L, an act imposing a supplemental tobacco tax and beer and liquor tax to fund a mandatory kindergarten program.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

HB 457, making fee splitting or accepting fees for referrals by pharmacists or pharmacies, or ownership of a pharmacy by a licensed practitioner, grounds for suspension or revocation of a pharmacy license.

Senator Currier moved adoption.

Adopted.

INTRODUCTION OF HOUSE BILLS

Senator Fraser offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 173 - 690 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 173-FN, making the Police Standards and Training Council responsible for certification of corrections officers and redefining the term "permanent policeman" to include "state corrections officers" for the purposes of the retirement system and relative to the payment of medical benefits to certain Group II retirement system members. Public Institutions, Health and Human Services committee.

HB 218-FN-A-LOCAL, relative to the driver training fund. Transportation committee.

HB 249-FN-A, relative to a lease-purchase agreement between the city of Franklin and the state to design and construct a new district courthouse; and extending lapse dates for certain capital appropriations. Capital Budget committee.

HB 262-FN, providing a 5 percent cost of living adjustment for teacher members of the retirement system and relative to when cost of living adjustments may be granted to retirement system members. Insurance committee.

HB 433-FN-LOCAL, providing a cost of living adjustment for group I and group II retirement system members. Insurance committee.

HB 435-FN, relative to an alternate state contribution for surface water treatment systems. Environment committee.

HB 437-FN, establishing a pilot program in one county designated by the court requiring parents involved with child custody or support issues to participate in certain seminars and making an appropriation therefor. Judiciary committee.

HB 450-FN-A, appropriating matching funds to the New Hampshire Historical Society for renovations to the Stone Warehouse in Concord. Capital Budget committee.

HB 453-FN, relative to delays in processing applications for state public assistance, and making an appropriation therefor. Public Institutions, Health and Human Services committee.

HB 556-FN-A, offering a reward for the apprehension of former Newport District Court Judge, John C. Fairbanks, and making an appropriation therefor. Judiciary committee.

HB 567-FN-A, requiring the office of state planning to conduct a satellite survey of clearcut areas and making an appropriation therefor. Environment committee.

HB 572-FN-A, authorizing the Division of Forests and Lands to assess administrative fines, establishing a forest management and protection fund, and appointing special deputy forest rangers. Environment committee.

HB 589-FN, requiring certain entities performing medical utilization review services to register with the Insurance Department. Insurance commitee.

HB 597-FN, relative to the New Hampshire Native Plant Protection Act. Environment committee.

HB 672-FN-A-LOCAL, establishing a Healthy Kids Corporation and making an appropriation therefor and continually appropriating a special fund. Public Institutions, Health and Human Services committee.

HB 674-FN, establishing an Enhanced Emissions Inspection and Maintenance Pprogram and requiring a diesel emissions study. Environment committee.

HB 690-FN, allowing and regulating limited liability companies and professional limited liability companies. Executive Departments and Administration committee.

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Tuesday, April 20 at 3:00 p.m.

Adopted.

LATE SESSION
RESOLUTION

Senator Disnard moved that the business of the day being completed, the Senate now adjourn until Tuesday, April 20, 1993, 3:00 p.m.

Adopted.

April 20, 1993

The Senate met at 3:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

I wish I could say something this afternoon that would make you laugh, but yesterday was not a very funny day. What happened twenty four hours ago in Waco is a sobering reminder of what it is possible for a leader to do

to his followers. What happened fifty years ago yesterday in Warsaw to the Jewish populace is another terrifying reminder of what it is possible for a leader to do to those dependent on him or her. So, Senators, we really need you to help us know and experience how good and caring and brave and gentle leaders can be.

Lord our God, lead us who lead. Forgive leaders whose interests are only their own; forgive followers who let leaders like that lead; and protect the innocent from both. Amen

Senator J. King led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bill sent down from the Senate:

HB 494, establishing a joint committee on recodification of solid waste laws.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bill sent down from the Senate:

SB 204, requiring certain hunters to wear hunter orange.

HOUSE MESSAGE

The House of Representatives has re-referred to committee the following entitled Senate Bill:

SB 59, relative to the privacy act.

COMMITTEE REPORTS

HB 284, an act regarding notice for condominium association meetings and relative to voting by condominium owners. Banks committee. Ought to Pass with Amendment. Senator Barnes for the committee.

2349B

Amendment to HB 284

Amend the bill by replacing sections 2 and 3 with the following:

2 Requirement Eliminated. Amend RSA 356-B:39, IV to read as follows:

IV.*(a)* The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such persons. ***The proxy or proxies shall list the name of the person who is to vote.*** No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated[,] ***or*** if it purports to be revocable without notice as aforesaid[, or if the signature of any of those executing the same has not been duly acknowledged]. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. The board of directors of the unit owners association shall

devise procedures to assure that all proxies voted at any meeting are valid and were duly executed by association members having the right to vote. Those procedures shall include one of the following:

(1) The board of directors shall deliver to the unit owners, together with their notice of meeting and agenda, proxy forms bearing a control number which the board of directors shall correlate to the list ofall unit owners then entitled to vote. At the noticed meeting, the board of directors shall recover all proxies and compare them to the control list maintained for that purpose. Any proxies which are on a form other than that provided by the board of directors or which do not correlate with the control list maintained by the board of directors shall be disregarded for purposes of determining whether a quorum was present at the meeting and for purposes of casting any vote at that meeting; or

(2) The board of directors shall recover at any duly noticed meeting all original proxies delivered to any person for purposes of voting at that meeting. The board of directors shall then independently confirm the validity of those proxies by selecting a random sample of not less than 10 percent of all original proxies returned to the board of directors at the meeting and confirm with the granting owners in writing that the proxy was voluntarily given and duly signed.

(b) The board of directors shall retain all proxies delivered to the board of directors and all independent written confirmation of any such proxies for inspection by the unit owners for a period of not less than 3 years from the date of the subject owners association meeting.

3 Effective Date. This act shall take effect upon its passage.

SENATOR BARNES: HB 284 deals with the problem of notifying condominium owners and time-share owners of association meetings because condominiums may be owned by several individuals or time-share owners. It becomes a great expense to the Condo Associations to mail out notices of meetings by certified mail as it is currently required by the law. The bill also deals with proxy votes and how proxy votes are handled. The Banks committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 313, an act relative to mortgage insurance. Banks committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

2299B

Amendment to HB 313

Amend RSA 417:4, VIII(e) as inserted by section 1 of the bill by replacing it with the following:

(e) Refusing to insure risks solely because of age (except in the case of life, accident or health insurance), place or area or residence, race, color, creed, national origin, ancestry, marital status, lawful occupation including the military service (except in the case of life, accident or health insurance), of anyone who is or seeks to become insured or solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy in which that person was the name insured or solely because the insured does not insure collateral business

with the insurer. ***The exemption in this subparagraph shall not permit a mortgage life insurance policy or certificate to cease, cancel or terminate solely on the basis of the mortgagor's age, until the mortgagor has reached the age of 80.***

AMENDED ANALYSIS

This bill prohibits mortgage life insurers from cancelling or terminating a mortgage life insurance policy or certificate solely on the basis of the mortgagor's age, until the mortgagor has reached the age of 80.

SENATOR LAMIRANDE: HB 313 changes the requirement that mortgage insurers had from canceling at the age of 65. In today's world it is not unusual for an individual to buy a house, condominium or a trailer at the age of 50 or older with a mortgage of 15 to 30 years. Under the current law, the mortgage insurance would expire at age 65 regardless of when the mortgage was issued. A person could find himself with a 15 year mortgage and no mortgage insurance at age 65. The bill simply changes the maximum age to 80. The amendment clarifies that the insurance can not be canceled solely on age, but if a person fails to make the premium payment for example, the insurance can be canceled. The committee voted that it ought to pass. I would point out that the Senate changed the wording of it just slightly in that it stated that the exemption in the sub paragraph, "shall not commit a mortgage insurance policy" and what was added was, "mortgage life insurance policy" because that was the purpose. It was also indicated that or solely terminated solely based on the mortgagors reaching the age of 80 years. It could be if that was the expiration of the mortgage itself, it could be terminated even though the person hadn't reached 80.

SENATOR WHEELER: Senator Lamirande, what has being insured at an older age up to age 80 and surely a higher percentage of those people are going to die, what impact is that going to have on the rates of mortgage insurance for younger people?

SENATOR LAMIRANDE: None. This is basically based on mortgage life insurance by a mortgage that you take out when you purchase a home. It has nothing to do with license per se. It expires when the mortgage expires.

Amendment adopted.

Ordered to third reading.

HB 332, an act authorizing municipalities to create revolving funds to support public recreation parks. Banks committee. Ought to Pass with Amendment. Senator Barnes for the committee.

2292B

Amendment to HB 332

Amend RSA 35-B:2, II as inserted by section 1 of the bill by replacing it with the following:

II. By fees and charges for recreation park services and facilities. All revenue from such fees and charges may be deposited into a special fund established for such purposes pursuant to RSA 31:95-c, or into a recreation revolving fund established by vote of the legislative body. If such a recreation revolving fund is created, the money in the fund shall be allowed to accumulate from year to year, and shall not be considered part of the political subdivi-

sion's general surplus. The treasurer of the political subdivision shall have custody of all moneys in such fund, and shall pay out the same only upon order of the recreation or park commission, or other board or body designated by the local legislative body at the time the fund is created. Such funds may be expended only for the purposes of this chapter, and no expenditure shall be made in such a way as to require the expenditure of, or create a liability upon, other town funds which have not been appropriated to that purpose.

SENATOR BARNES: HB 332 is a bill that allows municipalities to set up revolving funds to support public recreation parks. In times of economic hardships, recreational and leisure activities are the first to be cut back by both individuals and towns. This bill would merely allow municipalities to set aside non lapsing funds to provide financing of their recreational and parks programs. It allows for fees collected by the recreation programs to use these fees to help fund programs rather than to have the fees go through the general budget. The amendment merely clarifies the treasurer is the municipal or county treasurer and not the state treasurer. The committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HCR 13, a resolution urging the cities and towns of New Hampshire to adopt recycling programs. Banks committee. Ought to Pass. Senator MacDonald for the committee.

SENATOR MACDONALD: Mr. President and members of the Senate, basically what HCR 13 does is to urge the cities and towns to adopt recycling programs.

Adopted.

Ordered to third reading.

HB 141-FN, an act modifying the acid deposition control program. Environment committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: HB 141 simply deletes the second phase of the acid deposition control program. This legislation does would not weaken environmental standards. It would simply allow our statute to fit the federal time table. HB 141 is supported by the Department of Environmental Services and the Senate Environment committee and we recommend that it ought to pass.

Adopted.

Ordered to third reading.

HB 271, an act adding enhanced criminal penalties for acts of knowing endangerment under the Hazardous Waste Laws. Environment committee. Ought to Pass. Senator W. King for the committee.

SENATOR W. KING: HB 271 creates a felony crime of knowing endangerment for a certain violation in the Hazardous Waste Law punishable to a person as a Class A felony of up to $250,000 and to others up to $1 million.

SENATOR WHEELER: Senator King, could you give some examples of what those violations might be, is that like burning of a rubber tire or, what would that be?

SENATOR W. KING: No. A violation of Hazardous Waste Laws is dealing with storage and transportation of toxic waste.

SENATOR WHEELER: Asbestos?

SENATOR W. KING: No. More on the line of toluene and things like that.

Adopted.

Ordered to third reading.

HB 297, an act establishing a committee to study the economic and environmental benefits of conversion to propane gas. Environment committee. Ought to Pass with Amendment. Senator Pignatelli for the committee.

2281B

Amendment to HB 297

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a legislative committee to study the economic and environmental benefits of converting motor vehicles to propane gas. The committee shall be composed of 6 representatives appointed by the speaker of the house and 6 senators appointed by the senate president.

SENATOR PIGNATELLI: I yield to Senator Russman who has a floor amendment.

SENATOR HOUGH (In the Chair): Senator Pignatelli, we have to vote on the committee amendment and then I will recognize Senator Russman to offer his floor amendment. So unless there it is otherwise ordered I will call for the vote on the amendment as offered by the committee.

Amendment adopted.

SENATOR RUSSMAN: This floor amendment, there are two bills this session, one in the House and one in the Senate and both which dealt with a study of using propane and alternative fuels. The Senate bill which is now in the House and is in Science and Technology, there is no opposition to that and there is no opposition to this bill here. The bill on the account of no opposition essentially aligned the whole path that they have traveled. This bill essentially makes the two the same bill so that we don't have two bills out there with two different committees studying essentially the same situation. This broadens it somewhat so that it is to look at all types of alternative fuels and not just propane. We would urge passage of the floor amendment and save everybody's time in terms of a study committee in making it into one committee instead of two.

Senator Russman offered a floor amendment.

2319B

Floor Amendment to HB 297

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on the state and to study certain incentives and propose a state policy regarding the use of alternative transportation fuel vehicles.

Amend the bill by replacing all after the enacting clause with the following:

1 Legislative Findings. The general court finds and declares that:

I. It is the public policy of the state to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels or pollution. Improving air quality is a matter of statewide concern and is in the public interest.

II. It is in the state's best interest to conduct a comprehensive study of alternative motor fuels and alternative fuel vehicles to determine their effectiveness in reducing emissions of harmful pollutants into the air. The study should not only evaluate the environmental and economic benefits of expanded use of alternative fuel vehicles, but should also consider potential contributions alternative fuels would make to improve the state and national economies.

2 Committee Established. There is created the alternative transportation fuels study committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on improving the state's air quality and economy. The membership of the committee shall be as follows:

I. Two members of the senate, appointed by the president of the senate.

II. Two members of the house of representative, appointed by the speaker of the house.

III. One public member, appointed by the governor.

IV. The chairperson of the public utilities commission or designee.

V. The commissioner of transportation or designee.

VI. The commissioner of safety or designee.

VII. The commissioner of environmental services or designee.

VIII. The director of the governor's office of energy and community services or designee.

3 Appointments. The appointment of the members in section 2 of this act shall be made within 20 days after the effective date of this act. Vacancies occurring on the study committee shall be filled in the same manner as the original appointment.

4 Chairperson, Meetings, Quorum. The committee shall elect a chairperson from among its members at its first meeting. The first meeting, which shall be called by the senate members, shall be called within 30 days after the effective date of this act. Five members shall constitute a quorum. Decisions shall be reached by a simple majority of the members present and voting.

5 Mileage. Members of the committee shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate when attending to their duties on the committee.

6 Duties. The purpose of the committee is to study and analyze all issues pertaining to the use of alternative transportation fuels, including, but not limited to, natural gas, propane, electricity, ethanol, methanol, reformulated gasoline, solar energy, and hydrogen, and to make recommendations regarding the feasibility of expanding the use of alternative fuels and alternative fuel vehicles to improve the air quality of the state. The committee shall also study incentives to promote the use of alternative transportation fuel vehicles and propose a state policy regarding the use of these vehicles.

7 Report. The committee shall submit a report of its recommendations, together with any proposed legislation for the 1994 legislative session, to the senate president, the speaker of the house, and the governor, on or before November 1, 1993.

8 State Agencies. All state agencies and general court staff, including, but not limited to, legislative services, house and senate committee research, and the legislative budget assistant, shall provide assistance as requested by the committee.

9 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a committee to:

(1) Conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on improving the state's air quality and economy.

(2) Study incentives to promote the use of alternative transportation fuel vehicles.

(3) Propose a state policy regarding the use of these vehicles.

SENATOR CURRIER: Senator Russman, is this floor amendment generated by the Committee on Environment? Has the committee seen this and concurs?

SENATOR RUSSMAN: No. Matter of fact, the committee hasn't seen this. But there was talk about this in the committee hearing that wasn't this the same bill or wasn't this a similar bill that we passed previously, and it is essentially very similar to the Senate Bill. And that is the reason that we are trying to consolidate the two so that we can have one committee studying the same subject rather than having two studying the same subject.

Floor amendment adopted.

Ordered to third reading.

HB 369, an act requiring the commissioner of the Department of Environmental Services and the director of Public Health Services to study the issue of radon levels in the state of New Hampshire. Environment committee. Ought to Pass. Senator MacDonald for the committee.

SENATOR MACDONALD: HB 369, an act requiring the commissioner of the Department of Environmental Services and the director of Public Health Services to study the issue of radon levels in the state of New Hampshire and reference current laws and information on radon levels in which we have done in the future and to report back to us by November 1, 1993.

Adopted.

Ordered to third reading.

HB 585-FN, an act requiring state agencies to purchase recycled materials. Environment committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

2421B

Amendment to HB 585-FN

Amend RSA 21-I:14-a, III as inserted by section 1 of the bill by replacing it with the following:

III. Paper purchased by state agencies shall be at least 50 percent recycled material, including at least 10 percent post consumer recycled

waste material. Upon a showing by the agency that compliance is not possible, the director, division of plant and property management may exempt an agency's specific purchase from the requirements of this paragraph.

AMENDED ANALYSIS

This bill requires that paper purchased by state agencies, including the general court, be at least 50 percent recycled material including at least 10 percent post consumer recycled waste material. The director, division of plant and property management, may exempt agencies from these purchasing requirements, if compliance is not possible.

SENATOR LAMIRANDE: HB 585 requires paper purchased by state agencies to be at least 50 percent recycled including at least 10 percent post consumer recycled waste. The director of property management may exempt agencies from the provision if he or she finds that it is not economically feasible. In addition to this, some portions of the judicial branch are exempt because of the quality of paper that they require for official documents i.e. carbon copies in the back and that wouldn't be recycled paper. HB 585 simply insures that New Hampshire state agencies take steps to help preserve our environment through the recycling of paper. The committee recommended that the bill ought to pass.

SENATOR PODLES: Senator Lamirande, would you know what percentage of the recycled material does the state currently purchase?

SENATOR LAMIRANDE: Right now it is about 60 percent.

SENATOR PODLES: Does the bill require that the paper be purchased . . . the bill now requires that 50 percent, so how much is it now . . .

SENATOR LAMIRANDE: At least 50 percent it is saying.

SENATOR PODLES: So what are they doing now? Are they buying recycling paper, they apparently are. What percentage of it are they buying now, do you know?

SENATOR LAMIRANDE: They are buying approximately 55 to 60 percent from what I understand but this is a guarantee that they would buy the paper if it were at least 50 percent, if it is under 50 percent then they are not required to.

SENATOR PODLES: So this bill is asking them to at least buy recycled materials up to 50 percent, but what are they doing now, is it 20 percent or is it 30 percent and that is why you are raising it?

SENATOR LAMIRANDE: No. From what I recall in the hearing, right now it averages around 55 percent.

SENATOR PODLES: They will be reducing it then.

SENATOR LAMIRANDE: I would like to defer to Senator Russman.

SENATOR RUSSMAN: Part of the legislation that passed previously did not include the legislature, it was kind of exempted. This bill had started out originally having the court system interested and the only legislative system involved with purchasing recycled paper products. The Judiciary objected because they felt that it was an invasion of privilege that they were a separate entity and that we could not tell them what to do and what kind of paper to use. So therefore it left us . . . the idea is that the paper be of quantity such, not that 55 percent of the paper we buy be recycled, but the paper that we do buy be at least 50 percent recycled product and at least 10 percent of that be what they call, "post consumer waste"; in other words, after we have actually used it and tried to recy-

cle it. A lot of it when they talk about recycle is scrap paper that hasn't been destroyed in the process or abandoned in the process or cut or what have you. The idea here is to increase and require that the state legislative branch to actually use recycled paper. It is like the Governor's office and some of the offices are already doing so, but this would require the legislature also. I don't know if that helps you or not.

SENATOR BARNES: Senator Russman, a have a couple of questions if I may? I just heard before you got up on the floor that we were talking about the state already does 55 percent recycling and that we are cutting it down to 50. Can you address that?

SENATOR RUSSMAN: Some of the paper that we buy is recycled paper and some is not 50 percent recycled, in other words, we are talking about two different things here. One is requiring that paper that is bought to be at least 50 percent, it could be 75 or 100 percent recycled paper. I don't think that that figure is quite accurate as far as the amount of paper that we are actually buying at this particular time is recycled. I think that that may perhaps be an error.

SENATOR BARNES: Would you believe that I think that this bill is terrific, but I don't think that it goes far enough. Would you also believe that since I have been here since January every piece of paper that I have picked up that we use of state paper I haven't picked up one piece of recycled paper yet? That is why I found it hard to understand that number of the 55 that you explained to me. I have a guess that we have a much smaller percentage and I would almost tell you that it is in single numbers that we might use it.

SENATOR RUSSMAN: I think that you might be right, Senator. I think that it is deplorable. I think that the Senate itself should certainly take the lead in terms of purchasing even the letter heads that we purchase are not on recycled paper and I think that we should certainly set an example.

SENATOR BARNES: Thank you very much, Senator Russman.

SENATOR HOUGH (In the Chair): The Clerk advises the Chair that she has just called Graphic Services and although they are not required to use 100 percent recycled paper, the majority of what they print on is in fact recycled paper. The bills that come before us and the documents. That is for your information. It is a legitamate question and the Clerk obtained the answer post haste.

SENATOR BARNES: I appreciate that, but I didn't quite understand it, I missed something in translation.

SENATOR HOUGH (In the Chair): They don't use 100 percent recycled paper. The majority of what they print on is recycled.

SENATOR BARNES: And I thought that I heard you mention, Mr. President, that we are talking about the paper that we use here is recycled paper? They told you that over the telephone?

CLERK (GLORIA RANDLETT): No, sir. They told me that they print most of their stuff on recycled paper, but not everything.

SENATOR BARNES: I would like to know, personally, and I think that the Senate Chamber should know, what they do on recycled paper? Most of what they do, I haven't seen it, so apparently I have been in the wrong room.

Amendment adopted.

Ordered to third reading.

HB 655-FN, an act requiring the legislature to participate in the waste reduction and recycling program. Environment committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: HB 655 adds the latest legislative branch to the agencies of state government involved in the state recycling program. It was previously exempt.

Adopted.

Ordered to third reading.

HB 322, an act requiring insurers to provide insureds with a statement reflecting the dollar amount of allowable benefit for medical procedures. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to move ought to pass on HB 322. This bill would require insurers to provide the insured upon request a statement reflecting the approximate dollar amount of the liable benefits for medical procedures. It is aimed to provide the insured with the tools necessary to shop and utilize the most cost efficient medical providers. They must therefore obtain sufficient knowledge from the providers and have the incentive to research the cost to obtain this.

Adopted.

Ordered to third reading.

HB 348, an act standardizing forms used by insurance companies for medical benefits claims. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2300B

Amendment to HB 348

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Standardized Medical Benefits Form. Amend RSA 400-A by inserting after section 15 the following new section:

400-A:15-a Standardized Medical Benefits Form. The insurance commissioner shall adopt rules under RSA 541-A relative to one standardized claim form to be used by health insurers, health maintenance organizations, health service corporations, hospital service corporations, medical service corporations and preferred provider programs.

2 Interim Form. On and after January 1, 1994, and until the insurance commissioner's rules under section 1 of this act become effective, all health insurers, health maintenance organizations, health service corporations, hospital service corporations, medical service corporations, preferred provider programs and third party administrators shall use "HCFA-1500" and "UB-92" forms for all paper and electronic submissions and shall not routinely require additional forms or information. When HCFA officially replaces the "HCFA-1500" or the "UB-92" form, the replacements shall be considered the official form under this section. The commissioner shall make copies of these forms available to those providers who need them.

3 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill requires the insurance commissioner to establish by rule a standard form for all health insurers, health maintenance organizations, hospital service corporations, medical service corporations, health service corporations, and preferred providers to use for medical benefit claims.

The bill also provides for the use of forms HCFA 1500 and UB-92 as the standard forms until the commissioner's rules become effective.

SENATOR HOLLINGWORTH: The committee on Insurance would like to move ought to pass with amendment on HB 348. This bill would require the Insurance Commissioner to establish by administrative rules, a standard form for all health insurance providers to use for medical benefit claims and calls for the use of the form HCFA 1500 and form UB 92. The amendment adopted by the committee provides for the use of these forms until the commissioner officially replaces them which upon the time they can make copies available for providers who need them. Appearing in favor of the bill were the Blue Cross Blue Shield New Hampshire Medical Association, New Hampshire Hospital Association and the Health and Insurance Association of America and Matthew Thornton.

Amendment adopted.

Ordered to third reading.

HB 376, an act relative to the election by nonprofit corporations and municipalities to reimburse unemployment compensation benefits or to pay contributions to the unemployment compensation fund. Insurance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President, this bill was supported unanimously by the Insurance committee and it has the support of the Department of Employment Security and all of the nonprofit groups. There were loopholes in the law that allowed nonprofits to change annually which was confusing to the nonprofits as well as the Employment Security. The committee asks for your consent.

Adopted.

Ordered to third reading.

HB 418, an act relative to costs of prevailing employees under the Workers' Compensation law. Insurance committee. Ought to Pass. Senator Shaheen for the committee.

SENATOR SHAHEEN: The Insurance committee moves ought to pass on HB 418. What this bill does is merely a housekeeping bill that adds the words "and cost" to council fees which is already in the law. And it also adds the word, "board" to, "as approved by the board and court", which is "court" is already in the law. It pertains to any dispute over benefits under workers compensation.

Adopted.

Ordered to third reading.

HB 518, an act relative to automobile insurance premium rates. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

Senator Delahunty moved to have HB 518 an act relative to automobile insurance premium rates, laid on the table.

Adopted.

LAID ON THE TABLE

HB 518, an act relative to automobile insurance premium rates.

HB 521, an act relative to maternity benefits. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

1963B

Amendment to HB 521

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Maternity Benefits; Health Insurance. Amend RSA 415:18, I by inserting after subparagraph (r) the following new subparagraph:

(s) A provision that a maternity benefits rider will be made available at the insured's request, if maternity care is not covered under the policy. Nothing in this subparagraph shall be construed to apply to supplemental health insurance and disability insurance policies.

2 New Subparagraph; Maternity Benefits; Individual Health Insurance. Amend RSA 415-A:4, III by inserting after subparagraph (e) the following new subparagraph:

(f) Statement that a maternity benefits rider will be made available at the insured's request, if maternity care is not covered under the policy. Nothing in this subparagraph shall be construed to apply to supplemental health insurance and disability insurance policies.

3 New Paragraph; Maternity Benefits; Hospital Service Corporation. Amend RSA 419:5 by inserting after paragraph II the following new paragraph:

II-a. A statement that a maternity benefits rider will be made available at the subscriber's request, if maternity care is not covered under the contract. Nothing in this paragraph shall be construed to apply to supplemental health insurance and disability insurance policies.

4 New Paragraph; Maternity Benefits; Medical Service Corporations. Amend RSA 420:5 by inserting after paragraph II the following new paragraph:

II-a. A statement that a maternity benefits rider will be made available at the subscriber's request, if maternity care is not covered under the contract. Nothing in this paragraph shall be construed to apply to supplemental health insurance and disability insurance policies.

5 New Paragraph; Maternity Benefits; Health Service Corporations. Amend RSA 420-A:7 by inserting after paragraph II the following new paragraph:

II-a. A statement that a maternity benefits rider will be made available at the subscriber's request, if maternity care is not covered under the contract. Nothing in this paragraph shall be construed to apply to supplemental health insurance and disability insurance policies.

6 New Paragraph; Maternity Benefits; Health Maintenance Organizations. Amend RSA 420-B:8 by inserting after paragraph III the following new paragraph:

III-a. Every health maintenance organization shall state on its forms of evidence of coverage that a maternity benefits rider will be made available at the request of the enrolled participant, if maternity care is not covered in the insurance policy, contract or evidence of coverage. Nothing in this paragraph shall be construed to apply to supplemental health insurance and disability insurance policies.

7 New Paragraph; Maternity Benefits; Preferred Provider Agreements. Amend RSA 420-C:4 by inserting after paragraph VI the following new paragraph:

VII. A maternity benefits rider for covered persons who request it, if maternity benefits are not part of the health benefits plan. Nothing in this paragraph shall be construed to apply to supplemental health insurance and disability insurance policies.

8 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill requires all health insurers, hospital service corporations, health service corporations, medical benefit corporations, and health maintenance organizations to make available riders for maternity coverage if their policies do not provide such coverage. Such a requirement does not apply to supplemental health insurance and disability insurance policies.

SENATOR HOLLINGWORTH: The committee on Insurance moves ought to pass on HB 521. This bill amends several health insurance statutes by adding the requirement that riders from maternity be made available upon request on all policies issued in the state that do not provide it as a basic coverage. The amendment that the committee adopted is a housekeeping measure required by the Insurance Department. They would exclude types of policies that were never intended to be included and would have never called for maternity benefits. In support of the bill were the Insurance Department and Blue Cross and Blue Shield, the American Association of University Professors. In opposition there was no one.

SENATOR COLANTUONO: I just want to make sure that this bill doesn't require that the coverage be given without cost. In other words, the rider will be an additional charge?

SENATOR HOLLINGWORTH: That is right. It is only at the request of the policyholder.

Amendment adopted.

Ordered to third reading.

HB 669-FN, an act transferring the right to appeal in certain cases from a decision of the labor commissioner on Workers' Compensation from the Superior Court to the Compensation Appeals Board. Insurance committee. Ought to Pass. Senator Shaheen for the committee.

SENATOR SHAHEEN: All that this bill does is merely change the appeals process for Workers' Compensation to the Compensation Appeals Board rather than the Superior Court. There was no opposition to the bill and I would move ought to pass for the committee.

Adopted.

Ordered to third reading.

HB 110, an act relative to use and derivative use immunity. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2290B

Amendment to HB 110

Amend RSA 516:34, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) The person presiding over the proceeding communicates on the record to the witness an order issued under paragraph II, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination. No testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case or forfeiture. However, the witness may be prosecuted or subject to penalty or forfeiture for any perjury, false swearing, or contempt committed in answering or failing to answer, or in producing or failing to produce evidence in accordance with the order.

Amend the introductory paragraph of RSA 516:34, II as inserted by section 1 of the bill by replacing it with the following:

II. A prosecutor may, with the prior written approval of the attorney general or county attorney for the jurisdiction where offenses are alleged to have occurred, request an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, when in the judgment of the attorney general or county attorney:

AMENDED ANALYSIS

This bill limits the effect of an immunity grant in a criminal case by prohibiting the use of a witness' testimony or any evidence derived from the testimony in a prosecution for the offense by the state. Current law provides for complete, transactional immunity for any prosecution at all on the underlying offense. This bill also establishes the standard to be applied in the granting of use immunity and provides for an enforcement mechanism if the witness falsifies testimony or information under a use immunity grant.

SENATOR COLANTUONO: This bill changes the type of immunity witnesses in New Hampshire will get. For a long time New Hampshire has given transactional immunity which means that any witness whom the state wants to use as a witness in a case who might have been involved in a crime, gets immunity from the entire transaction that he is testifying about. That is much broader than the federal constitution requires or that the federal government and many other states have. So this bill abolishes that and puts into place what is called use immunity which simply means that if a witness is ordered to answer a question, the state can not use anything that that witness says or anything that may come about from what the witness says, against him in a later proceeding.

Amendment adopted.

Ordered to third reading.

HB 131, an act repealing a penalty provision regarding anabolic steroids. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2307B

Amendment to HB 131

Amend the bill by inserting before section 1 the following and renumbering the original section 1 and 2 to read as 2 and 3.

1 Statement of Intent. It is the intent of the general court to eliminate redundant and unenforceable statutes. Accordingly, because prescribing, selling, providing, and distributing anabolic steroids is regulated under federal statutes by the director, division of public health services, the following repeal of RSA 318-B:26, III-a is recommended.

SENATOR COLANTUONO: The amendment on page eight explains why this bill is being passed. It is a request of the Board of Pharmacies. We are simply deleting the requirement about anabolic steroids because they are covered under the federal statutes which we adopt in our state laws, so it is already covered by that and there is no need to have a special provision for it.

Amendment adopted.

Ordered to third reading.

HB 152, an act changing the time period within which a claim may be submitted against the state. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, HB 152 changes the limitation period on filing claims against the state. It reduces it from six years to three years. This brings the statute in line with municipalities. The committee moves ought to pass.

Adopted.

Ordered to third reading.

Senator Wheeler in opposition to HB 152.

HB 399, an act removing a certain portion of the blue laws regarding Sunday business activity and relative to certain police regulations. Judiciary committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: This bill basically does away with some antiquated laws which do not allow municipalities to determine for themselves what they want to have open or closed on Sunday. Let me just briefly read from this chapter, "nothing in this chapter shall prevent the selectmen of any town or city council from adopting ordiances or bylaws regulating retail business, etc. on Sundays." So it doesn't mandate to the cities and towns, it just allows them to choose for themselves whether or not to have blue laws still on the books. The same is for the second part of this bill. The police officers may make regulations. It simply removes language from prohibiting and the keeping open of such places on the Lord's Day. The committee urges this bill ought to pass.

SENATOR BARNES: Senator Cohen, I noticed from talking about police officers and smoking. Now that smoking, is that only in the streets or is that in restaurants?

SENATOR COHEN: It says streets here. It says, "street, lane or alley."

SENATOR BARNES: Would you believe that I am a little concerned that we have a new law that goes into effect on July 1 of this year and it concerns smoking in business establishments. And if this takes the police off the hook for enforcing that, we are really going to put the burden on the restaurant owners in the state of New Hampshire to be throwing smokers out of their restaurants if the police won't react to it. This sort of scares me a little bit. It sort of tells me that maybe that it is taken away?

SENATOR COHEN: It doesn't affect that in any way. This is for streets and that is for restaurants.

SENATOR BARNES: Thank you.

SENATOR PODLES: This amendment does remove the authority of the police officer to make regulations regarding smoking and restaurant closings. Because the restaurants now police themselves.

SENATOR BARNES: Would you believe, Senator, that I think that we better look at this real close. As I said earlier, we are going to cause an awful problem for the restaurant owners in the state of New Hampshire? You are going to have a lot of people duking it out and you don't want that to happen. The police have got to be involved in this endorsement.

SENATOR PODLES: There was no testimony against this bill. There was just testimony for the bill. There was a lot of support for it. This is what the committee decided on.

Adopted

SENATOR PODLES: Mr. President, the floor amendment which is #2413 removes the requirements that ordinances and bylaws must be first approved by the voters at a regular election or at a special election before they can be adopted and enacted before a town or city. So this floor amendment removes that requirement. The testimony was that the business in Hampton starts early and it came from Senator Hollingworth. Senator Hollingworth, you might explain to the body why we did this, it had something to do with Hampton.

SENATOR HOLLINGWORTH: This isn't my amendment. This came from the Municipal Association, Senator Podles. I support it, though. I think that it will address any concerns that people have that there may not be ordinances in place and this makes sure that the bill will not change any ordinances unless there is already protection in place.

Senator Podles offered a floor amendment.

2413B

Floor Amendment to HB 399

Amend RSA 332-D:4 as inserted by section 1 of the bill by replacing it with the following:

332-D:4 Exceptions. Nothing in this chapter shall prevent the selectmen of any town, or the city council of any city, from adopting bylaws and ordinances permitting and regulating retail business, plays, games, sports, and exhibitions on [the Lord's Day] ***Sundays***[, provided such bylaws and ordinances are approved by a majority vote of the legal voters present and voting at the next regular election. In towns of over 10,000, said approval may be obtained at a special election held before the regular election. But no such bylaws or ordinances shall permit public dancing on the Lord's Day after 1 a.m., or prize fights at any time on the Lord's Day, or the games of baseball, hockey, or football, or any games, sports, or exhibitions of physical skill at which admission is charged or donations accepted, to be held earlier than one o'clock in the afternoon, or the opening of theatrical or vaudeville performances or motion pictures earlier than two o'clock in the afternoon].

Floor amendment adopted.

Ordered to third reading.

HB 407, an act making technical changes to the laws governing the courts. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2296B

Amendment to HB 407

Amend RSA 547:3, I(c) and (d) as inserted by section 4 of the bill by replacing them with the following:

(c) The interpretation and construction of wills and the interpretation, construction, modification, and termination of trusts as that term is defined in RSA 564-A:1, I.

(d) The appointment, removal, surcharge and administration of trustees of trusts as that term is defined in RSA 564-A:1, I.

Amend RSA 547:3, II(a) as inserted by section 4 of the bill by replacing it with the following:

(a) Cases involving charitable uses; and trusts, other than express trusts, as that term is defined in RSA 564-A:1, I.

Amend the bill by replacing section 20 with the following:

20 Repeal. 1992, 284:89, relative to the freeze on judicial appointments, is repealed.

21 Effective Date. This act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill updates laws governing the jurisdiction and procedures of the probate courts.

The bill also:

(a) Removes a time constraint on the department of safety regarding the preparation of a master jury list.

(b) Makes a change in the reporting date for the administrative office of the courts' review of the court modernization fund.

(c) Clarifies that the state pays witness fees in criminal cases.

(d) Makes certain changes in the law required by last year's reclassification of misdemeanors as class A and class B.

(e) Repeals the freeze on new judicial appointments to the district court.

SENATOR COLANTUONO: This bill contains basically technical corrections to the omnibus court bill that we passed last year. Whenever we do those big changes, some things fall through the cracks and this bill is designed to correct a number of small problems. It is listed on page eight in the calendar. It removes a time constraint on the Department of Safety regarding the preparation of Master Jury list. It changes the reporting date for the Administrative Office of the Courts Review of the Court Modernization Fund, it clarifies the fact that the state pays witness fees in criminal cases. It corrects some mistakes in the law, last year reclassifying misdemeanor as Class A and B. It repeals the freeze on new judicial appointments to the District Court. It also repeals the requirement that all appeals in motor vehicle cases under the Administrative License Suspension, have to be held in Merrimack county. That was the wrong thing to do and now those can go to whichever county that the driver lives in. The committee urges ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 454-FN, an act removing the requirement that courts approve temporary transfers of county prisoners. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2158B

Amendment to HB 454-FN

Amend RSA 30-B:21 as inserted by section 1 of the bill by replacing it with the following:

30-B:21 Temporary Removal or Transfer. Any person confined in a county department of corrections facility may be transferred ***by the superintendent of the transferring county department of corrections*** to any other county department of corrections facility or to the county department of corrections in another county when such transfer is in the public interest[. The transfer proceeding shall be by petition of the superintendent of the transferring county department of corrections to the original sentencing court,] ***and*** subject to the approval of the county commissioners of the county to which the transfer is planned[, or by petition to the original sentencing court] for the purpose of facilitating work release or for other good cause shown. [Said court may, after hearing and for good cause shown, order such transfer under such terms and conditions as appear necessary.] The expense of transfer and maintenance shall be paid by the transferring county [petitioning for the transfer], unless waived by the receiving county department of corrections in accordance with a reciprocal or other arrangement between the counties involved. The superintendent of the ***transferring*** county department of corrections shall have custody over the prisoner during the transfer by a regular or specially authorized officer of that county. Upon admittance to the receiving facility, the prisoner shall be under the custody of the superintendent of the receiving county department of corrections. ***A prisoner shall have the right to contest any transfer under this section or to request a transfer by petition to the sentencing court.***

SENATOR COLANTUONO: This bill removes the requirement that you have to go to a court in order to get a transfer of a county prisoner. It gives the superintendent of the facility the authority to do that. Although the amendment that we passed on page eight and page nine of the calendar, it makes clear that the prison still would have the right to contest and transfer or to request a transfer by going to the court.

Amendment adopted.

Ordered to third reading.

HB 456-FN, an act modifying the bail statutes relative to persons arrested for violating certain protective orders. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2360B

Amendment to HB 456-FN

Amend section 1 of the bill by replacing it with the following:

1 New Paragraph; Restraining Order Violation; Arrest and Detention Until Hearing Required. Amend RSA 597 by inserting after paragraph I the following new paragraph:

I-a. If a person violates a restraining order issued under RSA 458:16, III, or a temporary or permanent protective order issued under RSA 173-B by committing assault, criminal trespass, criminal mischief, or another criminal act, a peace officer shall arrest the accused, detain the accused pursuant to RSA 594:19-a, bring the accused before a justice pursuant to RSA 594:20, and refer the accused for prosecution. Such arrest may be made within 6 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of the peace officer.

AMENDED ANALYSIS

This bill requires a peace officer to arrest and detain a person arrested for certain violation of a protective order pending a court hearing. Such arrests may be made within 6 hours after the violation without a warrant upon probable cause.

SENATOR COLANTUONO: This bill addresses a problem that has arisen in cases of domestic violence. Right now when a person violates a domestic violence restraining order or a marital restraining order, the police are supposed to take them into custody and they are supposed to be held until they go in front of a judge. Right now some bail commissioners are late on Friday night and Saturday morning or over the weekend are letting these people out. Partly because there's nothing in the bail statute that makes it clear to them that they can't do that. This bill takes the existing law, relative to those restraining orders and places the language in the bail statute so that the bail commissioners will know that they are not entitled to release these people.

SENATOR BLAISDELL: I don't know whether or not, Senator, that this has to come to Finance or not, it has no fiscal impact, but it will cost money. I wondered where it was coming from?

SENATOR COLANTUONO: Well the existing law is supposed to do this. In other words, if a person is arrested under RSA 458, existing law says that they are supposed to be held for not more than 48 hours. In fact, we are tying it into the arrest statute which says that they are supposed to be held more than 24 hours, we are actually saving money on this, we are cutting a day off this.

SENATOR BLAISDELL: Okay. That is not what the fiscal note on the back of the bill says and I just wanted to be sure of this, that is all. If you look at what it says, "an undeterminable," amount says that it will cost more and more money?

SENATOR COLANTUONO: Well, the amendment takes care of that problem.

SENATOR BLAISDELL: Fine.

Amendment adopted.

Ordered to third reading.

HB 493, an act revising the laws that require a prescription to purchase a hypodermic needle. Judiciary committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: I would like to make one thing clear at the outset, I hate needles. The sight of hypodermic needles makes me blanche. In fact, in 1992 I opposed a similar bill on this Senate floor. I thought, mistakenly, that if needles were made more available that people who are not intravenous drug users, might become so, well I was wrong. I missed the point. Availability of needles is not about drug abuse, it is about saving lives. This bill has nothing to do with encouraging or discouraging illegal drug use. It is about taking every precaution to protect our population from an unnecessary AIDS epidemic. At the time that I voted against the clean needles bill, I was not aware of the evidence. But here is the evidence, 40 states now have no controls over access to needles and in each of those states, there is in fact, no measurable increase in addictions. Yet there is clear and direct proof that lawfulness of over the counter needles, significantly reduces HIV, AIDS. In Connecticut, for example, where 60 percent of the cases of AIDS resulted from the use of dirty needles, when

needles became available, there was a quick 33 percent reduction in HIV positives. Another example, the cities of Norwich and Miami have very similar drug abuse problems, yet Florida does not require prescriptions and thus has a radically lower HIV rate. Even if we in this body don't really care about the lives of drug users, why must we sentence innocents to death unnecessarily. I am talking about, of course, sex partners of intravenous drug users and especially their children. In New Hampshire, 83 percent of all HIV positive children got their infection from a parent who was either an intravenous drug user or had sex with a user of unclean needles. AIDS is expected to be among the top five causes of death in children between the ages of one and four. When intravenous drug users know that clean needles are available, they stop sharing them. Evidence shows a dramatic drop in the sharing of needles. When they protect themselves, they are also protecting their sex partners and the babies born to their sex partners. Those are the innocents, those are the lives that we are protecting. There is no question that this bill will protect innocent lives. Vermont and Canada have long deregulated needles and they have no noticeably higher rates of intravenous drug use addiction. Addicts from other states have not migrated to them. Montreal has a very high number of intravenous drug users, but they have only one percent infection' rate due directly to the availability of clean needles. New Hampshires proportion of heterosexual infection is much higher than the national average and our current inadequate laws have a direct correlation to our higher HIV transmission rate. In fact, according to some news last night, in 1992 in New Hampshire, we had 48 cases in all of 1992, yet in the first two months of 1993, there have been 39 new cases in the state of New Hampshire. If this bill becomes law we all will have reduced the number of HIV infections in New Hampshire. The myth that permitting access to hypodermic needles will decrease the use of drugs is just that, a myth. Our current laws only serve to increase the spread of life threatening, preventable diseases like AIDS and Hepatitis. Dirty needles are the fire that is fueling the AIDS epidemic. We can stop that. The most important aspect of this bill, of course, is saving lives. We can look at costs as well. This will save New Hampshire money. The cost of care for an HIV patient is about $6,000 a year, for an AIDS patient about $33,000 a year and most addicts don't have health insurance. Saving money and saving lives of innocents is in the interest of the state. State Representative Cecilia Kane of Portsmouth has suffered from the loss of a son to AIDS. She has made it her mission to save other people from the tragedy that she and her family went through. If we today prevent one person, one innocent child, from getting this horrible disease that is the task that we legislators must do. I strongly urge the passage of this bill. It will save lives, thank you.

SENATOR BARNES: Senator Cohen, I just read this and I read it briefly. I have to admit and you did put a lot of time into this I am sure. Can you show me in here something about the disposal of these needles from these folks that get these needles, the users, and then is there something in here that says what happens to them after those folks have used them?

SENATOR COHEN: No, there isn't. We have a disposal problem. This would elevate the disposal problem somewhat in that the needles that are disposed of will be cleaner, they will be less dangerous. We still need to attend to that. I would like to see another bill dealing with that, but this bill will still saves lives.

SENATOR BARNES: You have a vehicle now, why wouldn't it make sense to put an amendment in covering the disposal of the needles, Senator?

SENATOR COHEN: I think that it is important that we get this bill passed now. That is another question that has to be dealt with. The AIDS counselors right now deal with the AIDS patients, this will help them to work with them if the AIDS patients are HIV patients come to the counselors. They will be more likely to if they know that they can get clean needles this way because they are becoming aware in all of the cases that have existed, when clean needles are available, the addicts go for the clean needles. When they talk to the counselors, they can find out about ways to dispose of the needles, there are ways to dispose of them and this bill will help enable the counselors to educate the addicts about ways to dispose of the needles in a much better way.

SENATOR BARNES: Thank you, I appreciate it.

SENATOR LOVEJOY: Senator Cohen, I didn't see anything in the bill that would identify those drug users who might need some help and require as we do other addictions that there be a corrective program, an education program or something that would remediate their habit. It seems to me again, with the vehicle as Senator Barnes has stated, that this would have more depth. It seems to me that if you're going to have a program that would have addicts going to get a prescription filled, then we would have a handle on who needed help and apply that help and make that a condition of the clean needle?

SENATOR COHEN: If needles are available only with prescription, the addicts are going to go and get them, that is the problem that we face in the state of New Hampshire. They are not going to identify themselves. All of the evidence shows that when clean needles are available, in all of the other states when they become available, the addicts themselves, chose to go and get the clean needles. They don't want to die.

SENATOR PODLES: I rise to oppose ought to pass of the bill. HB 493 looks good on paper but it is a failure in reality regarding both proper disposal and actual use of clean needles. The bill opens a pandora's box allowing ready access to syringes and needles to drug addicts. The sponsors of the bill believes that AIDS cases will be reduced because drug users will stop sharing needles if needles can be purchased legally at pharmacies. But there is no documented evidence that this will occur. I believe that more people will be using needles and drugs and that the spread of AIDS will increase rather than decrease in the drug communities. This is the wrong bill for what the proponents would like to do. I would like to share with you an article that was in the Union Leader dated, Thursday, May 14, 1992. "In Zurich, Switzerland, there was a park known as "Needle Park" and the city fathers after heavy analysis decided that it would be a panacea for their drug problems. Since drug pushers and users were proliferated along with crimes, they decided to encompass the dilemma into one area, the city park. The park become known as "Needle Park". Pushers and users were supplied free needles. It was a true drugie haven. This was to keep them confined and away from the children, businesses and so forth, they had the solution and they went with it. Recently on a very graphic television program, the mayor and city fathers conceded total failure. They acknowledge that Needle Park was a complete disaster. It solved nothing. Actually it increased all of the horror and was drawing in other Europeans as well as Americans. Needle Park was total chaos along with open drugs, murders, overdosing, disease and what not and it was spilling over in other cities. Needle Park

was an inferno of Hell. The availability of hypodermic syringes and needles to 18 year olds will make accessibility of these instruments to younger children that much easier. The increased sales will cause a hazardous waste disposal program that will seriously threaten the health and welfare of individuals. In trying to stop the spread of one disease, this bill would make it possible to expose many people, especially those who handle plastic bag trash, to many other diseases, such as hepatitis which is a lot worse, just a stick and that is all that it takes. AIDS takes more effort to contaminate somebody or give them the diseases than hepatitis. Hepatitis is a quickie. Plastic garbage bags also are sort of attacked by dogs and that presents a danger too. We have to make people accountable for the disposal of these needles in a way that is safe to the general public, but this bill does not do it. Veterinarians are required to keep used syringes in special containers and they have them picked up by disposal companies licensed to pick up medical waste. Diabetics also have a way of disposing of their needles. I have some statistics which come from the New Hampshire Joint Pharmacy Board which is dated April 7, 1993. "Eleven states require prescriptions and also have a paraphernalia statute captured under another statute. Sixteen states have explicitly syringes and needles in their drug paraphernalia and the penalty ranges from civil actions in Arkansas, the President's home state, to misdemeanor and felony convictions in other states. Six states have a general inject language, which is the hypodermic needle. So there are in all 33 states that capture it under a prescription or drug paraphernalia. Some of the states that require prescriptions are California, Massachusetts, Maine, Rhode Island". A Baltimore study confirms that the diabetics who should know better, share needles and share them in a state that already does not require prescriptions, yet Maryland is hardly an over-the-counter via as-you-please state for drug paraphernalia. Maryland requires the buyer of a syringe to fill out a record of purchase. Maryland, like Nevada, requires records to be kept on who is buying the devices and for what purpose. California needs a prescription and they have to pass hurdles on drug paraphernalia statutes in addition to prescription requirements. The state requires a registry to be maintained with name and address of the buyer. Veterinarians require a permit from the Board of Pharmacy. California is taking drug paraphernalia very seriously and New Hampshire should too. This bill does nothing to ensure the safety of New Hampshire citizens by regulating the sale, possession and disposal of injection devices. These obtained needles will be dumped on a street, in the gutter and along the fence of the school yards, dogs will be especially vulnerable to the danger of these needles. Since a prescription is required to obtain hypodermic syringes and needles in Massachusetts, Maine and Rhode Island, the passage of this bill will encourage out-of-state travel to New Hampshire to procure these instruments, in particular, the Nashua, Salem corridor. This could also be a loss of insurance coverage for diabetics. They could find out that they are no longer covered by their carrier. I would urge you to take a second look at this bill. This bill is not the solution to the problem. I think that perhaps that this should be studied more before anything like this is passed.

Recess.

Out of recess.

Senator Cohen moved to have HB 493 an act revising the laws that require a prescription to purchase a hypodermic needle, laid on the table.

Adopted.

LAID ON THE TABLE

HB 493 is laid on the table.

SENATOR PODLES: Mr. President, now that the bill is tabled, will there be at some future date an effort to take the bill off of the table?

SENATOR HOUGH (In the Chair): Senator Podles, the bill is a House Bill. The motion to table was accepted and the vote affirmed. The bill is on the table. Between now and May 20 a majority vote will remove the bill from the table. In the event that the bill is removed from the table we will be back to the committee report. The committee report has not yet been accepted.

SENATOR PODLES: How can I be sure that the bill is going to be removed from the table. It could die on the table?

SENATOR HOUGH (In the Chair): The Chair would state that the Chair would accept a motion to remove from the table between now and the date in our calendar for final action on non money bills in the non originating body, which is May 20.

HB 560, an act changing procedures regarding appointment of guardians of minors. Judiciary committee. Ought to Pass with Amendment. Senator Podles for the committee.

2291B

Amendment to HB 560

Amend RSA 463:2 as inserted by section 1 of the bill by replacing it with the following:

463:2 Nomination. Any person capable of making a will may nominate a guardian [therein] ***for his or her minor child in a will, by petition or by written consent to a petition by another.***

Amend RSA 463:6 as inserted by section 3 of the bill by replacing it with the following:

463:6 Petition by Individuals. Upon the petition of a parent whose parental rights have not otherwise been terminated, an adult sibling, a grandparent, an aunt or uncle, any person who has filed a petition for adoption of the minor child, or any person who has had physical custody of the child for not less than 30 consecutive days with the written or implied consent of the parent, the probate court in the county in which any minor is residing may, after reasonable notice to the parents, appoint a guardian of the person or of the estate of a minor, or of both. Such petition shall set forth that the parents of the minor, or other person having custody, are unfit or unable to have the custody and control of the minor and of the minor's estate and earnings, or that circumstances are such that the interest of the minor requires that a guardian be appointed.

Amend RSA 463:6-a as inserted by section 4 of the bill by replacing it with the following:

463:6-a Petition by Agency. Upon the petition of the division for children and youth services or a child-placing agency licensed pursuant to RSA 170-E, the probate court in the county in which any minor is residing may, after reasonable notice to the parents, appoint a guardian of the person or of the estate of a minor, or of both. The petitioner may be appointed guardian. Such petition shall set forth that the parents of the minor, or other person having custody, are unfit or unable to have the custody and control of the minor and of the minor's estate and earnings.

SENATOR PODLES: This bill just makes two minor changes in the guardian statute. It does allow the petitioner to also be a guardian and be appointed. It may attach a condition limiting the guardianship as in the best interest of the child. There are just a few minor additions to the bill. It adds by written consent to petition by another. This is what the amendment reads so it is a very minor bill.

Amendment adopted.

SENATOR PODLES: All that this amendment does, Mr. President, is to add the effective date. It shall take effect upon passage. It was just something that we forgot to do in committee.

Senator Podles offered a floor amendment.

2453B

Floor Amendment to HB 560

Amend the bill by replacing section 8 with the following:
8 Effective Date. This act shall take effect upon its passage.

Floor amendment adopted.

Ordered to third reading.

HCR 12, an act calling for the repeal of the Internal Revenue Service advisory opinion on mileage reimbursements for members of the General Court. Public Affairs committee. Ought to Pass. Senator Delahunty for the committee.

SENATOR DELAHUNTY: The bill does exactly what the analysis indicates and the Public Affairs committee urges your support of ought to pass.

Adopted.

Ordered to third reading.

HB 478-LOCAL, an act allowing municipalities to determine the net income requirements under the optional adjusted elderly property tax-exemption. Public Affairs committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: Most of the problems surrounding the issue of elderly exemptions where solved by the enactment of the optional adjusted elderly exemptions, because the legislative body of a city or town may insert the dollar amount of the exemption according to net factor and the dollar amount of assets alone; however, the amount of net income has been set by statute so that when a certain amount of time passes, economic conditions change or a reevaluation was done and a municipality reviews the elderly exemption from provisions, it is unable to change the income restrictions to better meet the needs of its residents without having a bill sponsored in the legislature. Making a statewide change to meet the needs of each community seems to be a very cumbersome method, at least in this instance, in making changes which must be adopted at the local level anyway. It is also difficult to fashion a statewide solution and to anticipate what could be very different local problems. This bill provides a mechanism to solve this problem at the local problem and to avoid re-introduction of state legislation every time a community undergoes reevaluation process. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 492-FN-A, an act relative to the Veterans' Cemetery committee and site suitability testing for a veterans' cemetery and making an appropriation therefor. Public Affairs committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This bill extends the reporting date for the Veterans' Cemetery committee from November 1, 1992 to November 1, 1993. It makes an appropriation for site suitability testing for a veterans' cemetery and it provides that the Department of Resources and Economic Development and the Department of Transportation may carry out the site search and the suitability testing on sites selected by the Veterans' Cemetery committee. The committee voted ought to pass.

Adopted.

Referred to the Division on Finance (Rule #24).

HB 237, an act requiring sporting clubs to recommend members to the Fish and Game commission. Wildlife and Recreation committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: The analysis in this bill is incorrect. It does not require . . . what this bill does is allows sporting clubs in each of the areas where they have commissioners, if they wish to, to join together to recommend persons for nomination, three persons from each area; however, in the area where the commissioners from the tide waters towns, the Advisory Committee on Shore Fisheries will determine TAPE INAUDIBLE.

Adopted.

Ordered to third reading.

INTRODUCTION OF HOUSE BILLS

Senator Lovejoy offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 1 - HJR 4 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

HB 1-A, making appropriations for the expenses of certain departments of the state for the fiscal years ending June 30, 1994, and June 30, 1995. Finance Executive Department committee.

HB 2-FN, relative to state fees, funds, revenues and expenditures. Finance Executive Department committee.

HB 25-A, making appropriations for capital improvements and establishing a committee to oversee and set priorities for certain appropriations. Capital Budget committee.

HB 427-FN, relative to the cost of living increases in the AFDC payment standard. Public Institutions, Health and Human Services committee.

HB 455-FN, increasing the funds available for prevention programs from not less than 5 percent to not less than 6 percent of the appropriation in each fiscal year after 1994, to the Division for Children and Youth Services. Public Institutions, Health and Human Services committee.

HB 613-FN, requiring the Director of the Division of Human Services to adopt rules changing how earned income is calculated for people who receive aid to the permanently and totally disabled to be consistent with federal law. Public Institutions, Health and Human Services committee.

HB 614-FN, changing the definition of disability for the purpose of receiving public assistance. Public Institutions, Health and Human Services committee.

HCR 14, urging members of Congress to oppose aspects of the proposed Federal Energy Tax which discriminates against heating oil consumers in the Northeast and Mid-Atlantic regions. Interstate Cooperation committee.

HJR 4, stating that it is the intent of the General Court that the Division of Public Health Services and the Fish and Game Department protect the water quality of shellfish producing waters and restore shellfish resources to the public as soon as possible. Environment committee.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 186-FN, requiring the Division of Water Supply and Pollution Control to set standards of design and construction for unconventional waste treatment systems.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 186-FN, requiring the Division of Water Supply and Pollution Control to set standards of design and construction for unconventional waste treatment systems.

Senator Russman moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SCR 1, in support of an intercity passenger rail system.

SENATE CONCURS WITH HOUSE AMENDMENT

SCR 1, in support of an intercity passenger rail system.

Senator MacDonald moved concurrence.

Adopted.

Enrolled Bill Amendment to HB 312

2446

Amend RSA 224-C:25 and 26 as inserted by section 3 of the bill by renumbering said sections to read as 227-C:25 and 227-C:26, respectively.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

HB 470, allowing selectmen or assessors to abate interest accrued on property taxes.

HB 620, relative to unemployment benefits for domestic workers.

SB 11, allowing 15-year-old persons to bus tables in dining rooms.

SB 13, extending the reporting date of the committee studying the effects of substance abuse on health care and economic costs to the state.

SB 14, relative to package deals sponsored by liquor licensees.

SB 56, relative to coverage for intra-family or inter-spousal claims under liability insurance policies.

SB 64, extending the reporting date of the committee to study head injury cases.

SB 75, allowing a property tax exemption for solar-powered electricity.

SB 80, restricting the use of motorized craft on Goose Pond in Keene and Turee Pond in Bow.

SB 116, relative to reporting of treatment or assistance given to victims of domestic abuse and requiring physicians and hospitals to use domestic violence protocol as adopted by the Department of Justice.

SB 131, extending the reporting date for the committee studying gender equity in sports.

SB 190, naming the Route 25 rest area in the town of Rumney as the Nathan Clifford Memorial Rest Area.

SB 221, relative to grandparents' visitation rights.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

HB 351, relative to the positions of town clerk, town treasurer, and tax collector and the terms for such positions.

HB 354, relative to electing planning board members in towns without a town council form of government.

HB 364, relative to the practice of architecture.

HB 443, relative to the applicability of the state-federal Unemployment Compensation Extended Benefit Program and relative to the status of the Commissioner of the Department of Employment Security as an interested party in cases in controversy at the administrative level.

HB 499, changing a reference to a veterans' organization and the qualifications for veterans' property tax credits.

HB 506, expanding the time during which a person is prohibited from using a light to locate wild birds or wild animals.

HB 603, relative to energy efficiency in state facilities.

HJR 2, expressing the opposition of the general court to federal mandate legislation and asserting its right to determine and impose appropriate sanctions upon the driving privileges of offenders within its own state boundaries.

SB 18, increasing the amount of damage required to necessitate reporting a boating accident.

SB 20, relative to representation of business organizations in Small Claims Court.

SB 37, adding and redefining terms relative to the New Hampshire Pharmacy Board.

SB 38, protecting against unauthorized access to teacher certification records.

SB 41, permitting selectmen to accept dedicated streets which have been approved by the planning board.

SB 46, relative to involuntary transfer or discharge of patients in health care facilities.

SB 114, relative to minors' settlements.

SB 123, relative to protection from infection by the Human Immunodeficiency virus and the Hepatitis B virus.

SB 125, changing the name of the task force established for women at risk for alcohol and other abuse during pregnancy.

SB 142, intercepting the sweepstakes winnings of delinquent child support payors.

Senator Currier moved adoption.

Adopted.

ANNOUNCEMENTS

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time, and when we adjourn, we adjourn until Tuesday, April 27, at 1:00 p.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 110, an act relative to use and derivative use immunity.

HB 131, an act repealing a penalty provision regarding anabolic steroids.

HB 141-FN, an act modifying the acid deposition control program.

HB 152, an act changing the time period within which a claim may be submitted against the state.

HB 237, an act requiring sporting clubs to recommend members to the Fish and Game commission.

HB 271, an act adding enhanced criminal penalties for acts of knowing endangerment under the hazardous waste laws.

HB 284, an act regarding notice for condominium association meetings and relative to voting by condominium owners.

HB 297, an act establishing a committee to study the economic and environmental benefits of conversion to propane gas.

HB 313, an act relative to mortgage insurance.

HB 322, an act requiring insurers to provide insureds with a statement reflecting the dollar amount of allowable benefit for medical procedures.

HB 332, an act authorizing municipalities to create revolving funds to support public recreation parks.

HB 348, an act standardizing forms used by insurance companies for medical benefits claims.

HB 369, an act requiring the Commissioner of the Department of Environmental Services and the Director of Public Health Services to study the issue of radon levels in the state of New Hampshire.

HB 376, an act relative to the election by nonprofit corporations and municipalities to reimburse unemployment compensation benefits or to pay contributions to the unemployment compensation fund.

HB 399, an act removing a certain portion of the blue laws regarding Sunday business activity and relative to certain police regulations.

HB 407, an act making technical changes to the laws governing the courts.

HB 418, an act relative to costs of prevailing employees under the Workers' Compensation law.

HB 454-FN, an act removing the requirement that courts approve temporary transfers of county prisoners.

HB 456-FN, an act modifying the bail statutes relative to persons arrested for violating certain protective orders.

HB 478-LOCAL, an act allowing municipalities to determine the net income requirements under the optional adjusted elderly property tax-exemption.

HB 521, an act relative to maternity benefits.

HB 560, an act changing procedures regarding appointment of guardians of minors.

HB 585-FN, an act requiring state agencies to purchase recycled materials.

HB 655-FN, an act requiring the legislature to participate in the waste reduction and recycling program.

HB 669-FN, an act transferring the right to appeal in certain cases from a decision of the Labor Commissioner on Workers' Compensation from the Superior Court to the Compensation Appeals Board.

HCR 12, an act calling for the repeal of the Internal Revenue Service advisory opinion on mileage reimbursements for members of the General Court.

HCR 13, a resolution urging the cities and towns of New Hampshire to adopt recycling programs.

Senator Disnard moved that the business of the day being completed, the Senate now adjourn until Tuesday, April 27 at 1:00 p.m.

Adopted.

Adjournment.

April 27, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. Mary Bealle, Senate guest Chaplain.

The Rev. David Jones, who usually offers the opening meditation, is away observing school vacation with his family. But, the issues and concerns about education that face our state haven't gone away nor are they on vacation this week and so I'll lift up some prayers for those concerns today beginning with the words of Ralph Waldo Emerson who said, "The secret of education lies in respecting the pupil."

May the Creator who has blessed human kind with the gifts of memory, reason, and skill help you who serve in this Senate to be good stewards of these precious resources so that you may honor and nurture them in yourselves and strive to do the same for all the people and pupils of this state.

Amen

Senator Delahunty led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 31, repealing sections referring to the loyalty oath requirement which was repealed last year.

SB 34-FN-LOCAL, including traumatic brain injury and autism in the definition of "educationally disabled child."

SB 81, creating a task force to coordinate resources addressing sexual assault and sexual harassment at postsecondary institutions.

SB 92-FN, to rename the School for Lifelong Learning of the University System of New Hampshire, the College for Lifelong Learning of the University System of New Hampshire."

SB 121, nullifying the law which amends RSA 457:29 relative to marriage license fees effective July 1, 1994, and raising the fee for marriage licenses.

SB 152, relative to the real estate transfer tax assessment when a deed is given in lieu of a foreclosure.

SB 175-FN, relative to a compact between New Hampshire and other states and probationers and parolees.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 124, relative to the operations of state correctional facilities.

SB 205, expanding the time during which a person is prohibited from using a light to locate wild birds or wild animals.

HOUSE MESSAGE

The House of Representatives has re-referred to committee the following entitled Senate Bill:

SB 230, relative to sprinkler systems in residential care homes and supported residential care facilities.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 153, prohibiting the buying and selling of bear and requiring the Executive Director of Fish and Game to adopt rules relative to the taking of moose.

HB 169-LOCAL, allowing town and school district meetings to be held outside the town or school district and relative to the charter of the Holderness School.

COMMITTEE REPORTS

HB 469-A, an act allowing the state treasurer to issue bonds to pay for debt issuance costs. Banks committee. Ought to Pass with Amendment. Senator Fraser for the committee.

2467B

Amendment to HB 469-A

Amend the title of the bill by replacing it with the following:

AN ACT

allowing the state treasurer to issue bonds to pay for debt issuance costs and to enter into swap agreements.

Amend the bill by replacing section 2 with the following:

2 New Section; Authority of State Treasurer to Enter into Swap Agreements. Amend RSA 6 by inserting after section 6:8-b the following new section:

6:8-c Swap Agreements.

I. In this section:

(a) "Obligations" means bonds, notes or other evidences of indebtedness, or lease, installment purchase, or other similar agreements or certificates of participation therein.

(b) "Swap agreement" means:

(1) An agreement, including terms and conditions incorporated by reference therein, which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, or any other similar agreement, including any option to enter into any of the foregoing;

(2) Any combination of the agreements in subparagraph (1); or

(3) A master agreement for any of the agreements in subparagraphs (1) and (2), together with all supplements.

II. The treasurer, with the approval of the governor and council, may from time to time enter into and amend any swap agreements that the treasurer determines to be necessary or desirable for the purpose of managing an interest rate, currency, commodity price, investment or similar risk that arises in connection with, or is incidental to, the issuance, carrying or securing of obligations or the acquisition or carrying of investments. Swap agreements entered into by the state shall contain such provisions, including payment, term, security, default and remedy provisions, and shall be with such parties, as the treasurer shall determine to be necessary or desirable after due consideration to the creditworthiness of those parties.

III. In connection with entering into any swap agreement the treasurer, with the approval of the governor and council, may enter into credit enhancement or liquidity agreements on behalf of the state, with such payment, security, default, remedy, and other terms and conditions as the treasurer determines.

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

In order to provide funds to pay the cost of issuing bonds sold by the state, this bill authorizes the state treasurer to issue additional bonds up to 102 percent of the authorized amounts. The proceeds from the additional bonds may be used only for the purpose of paying such issuance costs.

The bill also authorizes the state treasurer, with the approval of governor and council, to enter into and amend swap agreements that the treasurer determines to be necessary or desirable for investment purposes.

SENATOR FRASER: Mr. President, the original HB 469 was a very straightforward, simple bill which would allow the treasurer to add two points to a re-issuance of a bond to cover additional expenses. At the public hearing, Treasurer Thomas brought to us a proposed amendment that is rather complex. With your indulgence, I would like to read a statement that I have prepared. It has to do with interest rates swaps as provided in this amendment. Let us suppose for a moment that I have a floating rate mortgage and a fixed rate certificate of deposit. You have a fixed rate mortgage and a money market investment. For the purpose of this example, both the variable rate mortgage and the money market investment change rates on a monthly basis. Both mortgages and investments are for identical amounts and I am somewhat pessimistic about interest rates and I believe that they are going to rise in the next two years. This would mean that I would be paying more in interest cost and not receiving as much income as I could if I had a variable rate investment. You on the other hand, think that interest rates are going down over the same period, causing you to pay more for your mortgage than you would if it were a variable and giving you less income because of the declining money market rate. Because we each have something the other wants we enter into a contract to exchange or to swap, if you will, our interest payment and interest income, exchanged for a fixed period of time, let us say for two years, over which I think the interest rates will rise. Now I will pay you the interest for my CD and you will pay me the interest for your money market fund. I will make the interest payments on your variable rate mortgage and you will pay the interest rate on my fixed rate mortgage. Just to bring it into perspective, this is high finance, Mr. President, and it wouldn't apply to you and me as individuals. It has to do with allowing the state Treasurer a great deal more flexibility in dealing with the financial community, banks, investment companies, insurance companies and the likes. We would urge its adoption.

SENATOR COLANTUONO: Senator Fraser, on the original bill I understand that what this will do is to allow the Treasurer to bond the cost for dead issuance, which I am not really sure is a sound business practice. But, can you tell me how we pay right now for the issuance cost of these bonds?

SENATOR FRASER: My understanding, Senator Colantuono, the original issuance is built into the cost. What the Treasurer is proposing that

on a reissuance of a bond, there is no accommodations for additional costs, so she is asking for authority to charge up to 102 percent.

SENATOR COLANTUONO: So is there language in the present law that allows us to bond 102 percent for the initial issuance?

SENATOR FRASER: No. If I recall the testimony, maybe Senator Barnes can help me, but I think that the Treasurer, when she testified in the original bill, said that the cost of that issuance was built into the original rate. It's with the reissuance which they found out that it is costing the state money.

SENATOR COLANTUONO: Thank you.

SENATOR BLAISDELL: I agree with Senator Fraser.

Amendment adopted.

Ordered to third reading.

HB 529, an act requiring certain billing procedures for custodial fees on IRA accounts. Banks committee. Inexpedient to legislate. Senator Barnes for the committee.

SENATOR BARNES: HB 529 requires certain billing procedures for IRA accounts. Testimony was presented that after the October 1991 upheaval of the banking industry in New Hampshire, people had a problem with banks deducting the annual fee of an IRA account from the account itself, rather than allowing the individual the option to pay the fee from another account. Testimony was also presented that this was only one banking institution and the problem has since then been rectified. The committee felt that the problem was the result of one bank absorbing several different banks and needing to accommodate the many different policies of those defunct banks. This bill would put an undue burden on all banks and it would be micro-managing the banking industry in the state of New Hampshire; therefore, the committee recommends inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 163-FN, an act establishing a Leaking Underground Storage Tank Cost Recovery Fund. Environment committee. Ought to Pass. Senator MacDonald for the committee.

SENATOR MACDONALD: HB 163 is a request of the Department of Environmental Services. The bill simply sets up a separate account for the Leaking Underground Storage Tank Cost Recovery Fund. The federal EPA has requested a district fund to simplify the federal audited process. The committee recommends ought to pass.

SENATOR COLANTUONO: Senator MacDonald, can you please tell me where the money comes from to establish this fund?

SENATOR MACDONALD: Yes, it comes from the federal government. The U.S. Environment Protection Agency.

Adopted.

Ordered to third reading.

HB 378, an act relative to the selection of members of the Wetlands Board. Environment committee. Inexpedient to legislate. Senator Lamirande for the committee.

SENATOR LAMIRANDE: This bill calls for a change in the way nominees for the Wetlands Board are made. Currently the public organization submits three names and the Governor and Council choose one of the three

names. What this bill would have done was that if they didn't agree with any of the three people that were submitted they could then submit three more people and if you still didn't agree with those three people they would continuously submit three people until such time that they agree with them. The past process was only in effect since 1991 and it seems to have taken some of the politics out of the Wetlands Board. The committee felt that it would be best to leave the current system unchanged and we recommend inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 400, an act authorizing the Division of Water Resources to acquire the Oliverian Dam in Benton and transferring certain dam rights and easements to the Division of Water Resources. Environment committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: HB 400 gives the Water Resources Board the responsibility to maintain ten additional dams. Nine of these dams are owned by the Fish and Game and it was felt that the maintance funds should come from the Dam Maintenance Fund account rather than the Fish and Game funds. The Oliverian Dam is currently owned by the Grafton County Conservation District but maintained by the state. There will be no additional cost to the state since it is already responsible to these dams. The committee recommended that it ought to pass.

SENATOR BLAISDELL: Senator, it is my understanding that this is going to cost a group $100,000 to do this? Was there any talk of any additional capital appropriations of the Dam Maintenance Fund, was anyone talking about that at all?

SENATOR LAMIRANDE: No, there was no discussion whatsoever.

SENATOR BLAISDELL: I understand that this is going to cost the agency $100,000 to perform this work? Where does that $100,000 come from, that is what I want to know?

SENATOR LAMIRANDE: I think that I would yield to my colleague, Senator Russman.

SENATOR RUSSMAN: My understanding is that that was left out of House Appropriations. I understand that Representative Schotanus, if he hasn't already talked with you, he is going to talk with you about that. There is an appropriation there that would have to come from planning the emergency plan for each one of those dams. But there are no plans right now.

SENATOR BLAISDELL: Just let the record show that Representative Schotanus hasn't talked to me, but this would be a $100,000 appropriation from this committee and they can't stand it, so Senate Finance would be very glad to take care of some work that hasn't been done.

Referred to the Division on Finance (Rule #24).

HB 434-FN, an act relative to the assessment of the Oil Import License Fee. Environment committee. Ought to Pass. Senator W. King for the committee.

SENATOR W. KING: HB 434 changes the point of time in which the Oil Import Fee is assessed from the point of sale to the point of import. It makes what seems to be a change in the amount, it changes it from a per barrel fee to a per gallon fee.

Adopted.

Ordered to third reading.

HB 503, an act relative to past legislative enactments authorizing water use in New Hampshire and giving official notice to all water users that the Division of Water Resources will prepare a list of all water users. Environment committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: This is one of the four bills that the Public Water Rights Study Committee was involved with. HB 503 will give us a better handle on all of the legislative grants that have been given since colonial times up until present for water rights. It also serves notice that major water users have to let the state know of their water use by November of 1998. The bill is supported by the Ski Areas Association, the Water Companies, the BIA, and the environmental community. The committee recommends ought to pass.

Adopted

SENATOR RUSSMAN: The floor amendment relative to the continuation of water use up until 1994 extended from June of 1993 to 1994 because there is additional work that has to be done in terms of finding out who the water users are and so on and so forth. This allows water withdrawals as presently being occurring; frankly, the committee was going to have this as part of the amendment from the committee, but we realized at the last minute that we did not include this as part of the bill and so therefore we are offering it as a floor amendment at this time.

Senator Russman offered a floor amendment.

2529B

Floor Amendment to HB 503

Amend the bill by replacing all after section 3 with the following:

4 Water Withdrawal Date Extended. Amend 1990, 148:4-a, I as inserted by 1991, 356:8 and amended by 1992, 28:1 to read as follows:

I. Except as provided in paragraph III, for purposes of the public trust doctrine, water users registered with and reporting use or withdrawal with the water resources division of the department of environmental services, pursuant to 1983, 402:1, V, as recodified to RSA 482:3, III, as amended, and their successors and assigns, are authorized to take water through June 30, [1993] ***1994.***

5 Water Withdrawal for Hydro-Electric Facilities. Amend 1990, 148:4-a, IV as inserted by 1991, 356:8 to read as follows:

IV. All registered hydro-electric facilities which continue operations consistent with available water volumes shall be deemed to be operating in a manner which is consistent with the provisions of paragraph II provided that they continue to report their usage to the division of water resources, department of environmental services, pursuant to 1983, 402:1 and RSA 482:3[, for the duration of the public water rights study].

6 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill requires the department of environmental services, division of water resources, to be the recipient of information regarding the status of past legislative authorizations for water withdrawal.

The bill gives official notice to all water users using water under a legislative authorization, registered and unregistered, that the division of water resources will prepare a water user list in order to determine the current level of withdrawal in the state. Obsolete water uses granted by the legislature in the past will be repealed at a future date.

This bill requires the department of environmental services to prepare and submit a listing of obsolete legislative authorizations to the speaker of the house, the senate president, the governor and the appropriate house and senate committees by November 1, 1998.

This bill extends the authorization for registered water users to continue to take water from June 30, 1993, to June 30, 1994.

This bill also provides that registered hydro-electric facilities will be considered to be in compliance with the public trust doctrine concerning water use as long as they continue operations consistent with available water volumes, not simply for the duration of the public water rights study, but indefinitely.

Floor amendment adopted.

Ordered to third reading.

HB 571-FN, an act establishing the Emissions Reduction Credits Trading Program and creating a Committee to Study Emissions Reduction Credits Trading. Environment committee. Ought to Pass. Senator Russman for the committee.

Senator Russman moved to have HB 571-FN an act establishing the Emissions Reduction Credits Trading Program and creating a Committee to Study Emissions Reduction Credits Trading, laid on the table.

Adopted.

LAID ON THE TABLE

HB 571-FN an act establishing the Emissions Reduction Credits Trading Program and creating a Committee to Study Emissions Reduction Credits Trading.

HB 102, an act changing the penalty for DWI and boating while intoxicated while transporting a person under the age of 16. Judiciary committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to move ought to pass on HB 102. HB 102 is a housekeeping measure. During the Committee of Conference last year, on the boating while intoxicated bill, language concerning the penalties, unfortunately, in the enrollment process this language was left out and the House agreed to introduce this bill this session to reincorporate the language. The bill also changes the penalty from loss of license and imprisonment to attendance at a seven day Residential Impaired Drivers Intervention Program. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 128-FN, an act relative to the penalty for falsifying applications and to the fee for picture identification cards. Judiciary committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Judiciary asks ought to pass with amendment on HB 128. It changes the terminology of perjury to unsworn statement under the penalty of falsifying applications. The bill also changes the fees for individuals who are turning in a drivers license and want a state I.D. card. The bill is very simple and it had no opposition. We recommend ought to pass with amendment.

Adopted.

Ordered to third reading.

HB 166, an act relative to felons who own or possess dangerous weapons. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2451B

Amendment to HB 166

Amend RSA 159:3 as inserted by section 1 of the bill by inserting after paragraph II the following:

III. It is an affirmative defense to a charge under this section that a felony of which a defendant has been convicted in another jurisdiction would not have constituted a felony in the state of New Hampshire at the time such felony was committed.

AMENDED ANALYSIS

This bill makes persons convicted of certain felonies in the federal system, other states, possessions or territories of the United States guilty of a class B felony if such person owns or possesses a dangerous weapon.

SENATOR COLANTUONO: HB 166 was a request from the Attorney General's Office. It tightens up the law that makes it a crime for a felon to posses firearms or other dangerous weapons. Because right now under the existing law it is only illegal if the person had been convicted of a felony against the person or property of another and that excludes most drug offenses. So the Attorney General's Office wanted us to broaden that to include felons who have been convicted of drug offense. The amendment on page six of the calendar makes it clear that you are only guilty of being a felon if you are in possession of a firearm or other dangerous weapon and if your underlying offense is of the type that would have been a felony in this state at the time that it was committed. With that amendment, we recommend ought to pass.

Amendment adopted.

Ordered to third reading.

HB 167, an act clarifying circumstances under which a person is justified in using deadly force. Judiciary committee. Ought to Pass. Senator Colantuono for the committee.

MOTION TO RECOMMIT

Senator Colantuono moved to recommit HB 167 an act clarifying circumstances under which a person is justified in using deadly force.

Adopted.

HB 167 is recommitted.

HB 214-FN-A, an act relative to results of toxicology tests and the salary of the forensic toxicologist and making an appropriation therefor. Judiciary committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: The state now has a toxicology lab. There is a person there making tests to be used in drugged driving cases. This bill puts the same language in relative to drugged driving cases as we have now for drunk driving cases, which say that if a defendant does not file a motion within ten days to have the person testify, then our analyst doesn't have to leave the lab and go down to all of the various district courts around the state. That is a good improvement so that our lab people can stay in the lab. The bill also sets an appropriation of $3,050 for the

next biennium to pay a portion of a salary for that person. There is a federal grant that will be falling that much short so we need that extra money and then after that the grant will run out and the state will have to pay that salary.

Adopted.

Referred to the Division on Finance (Rule #24)

HB 215-FN, an act relative to extradition. Judiciary committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: Tape inaudible.

Adopted.

Ordered to third reading.

HB 268, an act increasing the penalty for certain subsequent offenses of indecent exposure. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2507B

Amendment HB 268

Amend RSA 645:1 as inserted by section 1 of the bill by replacing it with the following:

645:1 Indecent Exposure and Lewdness. A person is guilty of a misdemeanor if he:

I. Fornicates, exposes his genitals or performs any other act of gross lewdness under circumstances which he should know will likely cause affront or alarm.

II. Purposely performs any act of sexual penetration or sexual contact on himself or another in the presence of a child under 16 years of age. Each subsequent offense, whether in this jurisdiction or under a statute which prosecutes the same conduct in any other jurisdiction, shall be guilty of a class B felony.

AMENDED ANALYSIS

This bill increases the penalty for certain subsequent offenses of indecent exposure.

Persons convicted of such subsequent offense shall be defined and registered for 10 years as sexual offenders.

SENATOR COLANTUONO: Tape inaudible.

Amendment adopted.

Ordered to third reading.

HB 352, an act requiring DWI offenders to supply a certified copy of their New Hampshire driver's license record at the time of enrollment into an impaired driver intervention program. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2503B

Amendment to HB 352

Amend RSA 263:65-a, IV(a) as inserted by section 1 of the bill by replacing it with the following:

IV.(a) Upon enrolling in an impaired driver intervention program, a person shall provide to the program an original certified copy of the per-

son's driver's license record. Such record shall be secured from the division of motor vehicles, or from the state in which the person holds a driver's license, if an out-of-state resident. The person shall pay for all costs involved in securing the certified copy.

SENATOR HOLLINGWORTH: HB 352 an act requiring DWI offenders to supply a certified copy of their New Hampshire driver's license record at the time of enrollment into an impaired driver intervention program. The amendment simply adds the word 'record' to the bill which was omitted during the original drafting.

Amendment adopted.

Ordered to third reading.

HB 363, an act exempting certain nonresidents who are peace officers or hold valid licenses to carry loaded pistols and revolvers from obtaining such license in this state. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President and members of the Senate, HB 363 extends full faith and credit to pistol and revolver permits granted by a sister state which agrees to recognize a New Hampshire permit. Such person must carry upon his person, a license held from the state in which he resides. The effect of the bill is to treat carry permits like a drivers license. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 462-FN, an act relative to the Victims' Assistance Fund. Judiciary committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: HB 462 was a result of a term paper of a Franklin Pierce student. He had taken on the project of rewriting the Victims' Assistance Program which was then submitted to the legislature as a bill. The House had looked at the proposal and decided to keep what you see now as HB 462 which clarifies that a Guardian Ad Litem can make a claim for a victim for assistance especially in the case of incest or abuse by a parent. The bill also extends the date by which a claim can be submitted under the Victims' Assistance Fund. Currently a claim must be submitted within 60 days. But when dealing with claims, especially by children, it may take as long as a year. The committee recommends ought to pass.

Recess.

Out of recess.

Senator Baldizar moved to have HB 462-FN an act relative to the Victims' Assistance Fund, laid on the table.

Adopted.

LAID ON THE TABLE

HB 462-FN an act relative to the Victims' Assistance Fund.

HB 537, an act relative to registration of sexual offenders. Judiciary committee. Ought to Pass with Amendment. Senator Cohen for the committee.

2504B

Amendment to HB 537

Amend paragraph III of section 1 of the bill by replacing it with the following:

III. Has completed his sentence not more than 6 years before the effective date of this act.

SENATOR COHEN: HB 537 requires certain persons convicted of sexual offense as a condition of parole to register as sex offenders. The purpose is to limit repeat offenders. It makes the registration of convicted sex offenders retroactive. The original legislation from last year was pro active, meaning that only those people in the future would be on the registration list. The intent was to have a registry of all sexual offenders, even those convicted before the legislation was enacted. The committee looked at the bill and amended it to make registration of previously convicted sexual offenders retroactive to six years from the enactment date. The six year criteria is not an arbitrary one, but comes from the statute of limitation on rape. There was no opposition to the bill. The committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 565, an act prohibiting hazing. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2505B

Amendment to HB 565

Amend RSA 631:7, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) "Organization" means a fraternity, sorority, association, corporation, order, society, corps, athletic group, cooperative, club, or service, social or similar group, whose members are or include students, operating at or in conjunction with an educational institution.

Amend RSA 631:7, I(d)(1) as inserted by section 1 of the bill by replacing it with the following:

(1) Such act is likely or would be perceived by a reasonable person as likely to cause physical or psychological injury to any person; and

SENATOR HOLLINGWORTH: I rise on behalf of the Senate Judiciary committee in support of HB 565 as amended. This is for some of you Senators who said that you never thought that I would change my mind. This is a bill that I clearly have. Several years ago when I sat on House Judiciary, a bill on hazing similar to this came before us, and at that time we made it inexpedient to legislate. I can tell you that today I stand in total support of this legislation. So for any of you that doubted that I would change, there is always hope for me. During the hearing, several of the student administrators represented the universities and colleges, and I was very, very impressed with their testimonies. I think that we have wonderful, well informed young people out there that showed dedication to something that they believe is in the best interest of the colleges and the protecting of young people. This bill will break the veil of secrecies surrounding hazing on college campuses, regrettably death and other serious injuries to students that have prompted this legislation in 35 states. There have been many deaths, unfortunately, and I hope that this legislation will help to correct that problem. We would ask ought to pass with amendment on this piece of legislation.

SENATOR COLANTUONO: I rise in support of the bill. I voted for the bill in committee and I intend to vote for it here. I just wanted to put some of my concerns that I had in the committee on the record. Page two,

part two of the bill makes it a crime to be a student knowingly submitted to hazing and failed to report such hazing to law enforcement authorities. What that basically does is to say that if you engage in hazing activity, you have to turn yourself in, and that to my way of thinking is plainly unconstitutional as in being in violation of your right against self incrimination. So I think that if that were ever tested, it would clearly be struck down. I tried to get that removed in the committee but I wasn't successful. I also have a problem with paragraph three which says, "anyone who is present or acquires knowledge of hazing and fails to report that hazing is also guilty of a crime". That to me just smacks too much of the Eastern European type of society where everybody has to tell on everyone else. It is unprecedented in any criminal law that I am aware of in New Hampshire. The only thing similar that we have is mandatory reporting of child abuse or elder abuse, and there is a good reason for that because they can't report crimes themselves, the victims of those crimes. So I think that those two are overdoing it and that they shouldn't be in the bill. But I think that having a bill against hazing is a great idea. I think that it is a practice that shouldn't occur. I, too, applaud the young students for their work on the bill.

Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Baldizar moved to have HB 462-FN, an act relative to the Victims' Assistance Fund, taken off the table.

Adopted.

HB 462-FN, an act relative to the Victims' Assistance Fund.

SENATOR BALDIZAR: I moved to pass this bill.

Adopted.

Ordered to third reading.

HB 581, an act relative to the use of an altered form of identification to purchase alcoholic beverages. Judiciary committee. Inexpedient to Legislate. Senator Podles for the committee.

SENATOR PODLES: Mr. President, HB 581 suspends the license of a person under 21 who uses an altered or false form of identification. The bill is redundant. This is already addressed in RSA 263:12 in cross reference in 263:56. The penalty is a misdemeanor. The committee recommends inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 595-FN, an act allowing HIV testing for AIDS of a perpetrator of certain crimes at the request of the victim. Judiciary committee. Ought to Pass with Amendment. Senator Baldizar for the committee.

2502B

Amendment to HB 595-FN

Amend the bill by replacing section 2 with the following:
2 Effective Date. This act shall take effect upon its passage.

SENATOR BALDIZAR: HB 595 allows for the testing for HIV of victims of certain crimes, specifically sexual assault crimes. Inmates at the state prison are automatically tested for AIDS when they are processed into the prison system, but the victim of the assualt is not tested and under the confidentiality code cannot be told if the perpetrator of the assualt has tested positive or negative. This puts additional strain on the victim because of the fear of AIDS. The bill also allows for counseling of victims. The counseling is to explain to the victim what the HIV test is and what it revealed. A person is counseled that a negative reading does not necessarily mean that HIV is not present and they may have to be retested every year or in the case of a positive result, where to go for treatment. The committee felt that after the testimony that the premise of this bill is an important one and therefore amended the effective date to be immediate upon passage. The committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 607-FN, an act relative to the plea-by-mail program. Judiciary committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Judiciary asks ought to pass on HB 607. This bill passed last year and there was a provision in it regarding people who pleaded-by-mail and then failed to appear in court; it was inadvertently drafted without it. This merely puts a mechanism for default into the statute dealing with the plea-by-mail. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 645-FN, an act repealing a provision requiring approval by the Superior Court of rules adopted by the Board of Tax and Land Appeals, increasing a filing fee charged by the board; and relative to the effect of an abatement appeal on subsequent taxes. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, HB 645 repeals an outdated provision by which the Board of Tax and Land Appeals must get prior approval of the rules by the Superior Court. The bill also increases filing fees to make them equal across the board and it makes provisions for subsequent taxes as the result of an abatement appeal. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 671-FN, an act increasing the term of a resident's license to carry loaded pistols and revolvers. Judiciary committee. Ought to Pass with Amendment. Senator Podles for the committee.

2501B

Amendment to HB 671-FN

Amend RSA 159:6 as inserted in section 1 of the bill by replacing it with the following:

159:6 License to Carry. The selectmen of a town or the mayor or chief of police of a city or some full-time police officer designated by them

respectively, upon application of any resident of said town or city, or the director of state police, or some person designated by him, upon application of a nonresident, shall issue a license to such applicant authorizing him to carry a loaded pistol or revolver in this state for not more than [2] ***4*** years from the date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any proper purpose, and that he is a suitable person to be licensed Hunting or target shooting shall be considered a proper purpose. The license shall be in duplicate and shall bear the name, address, description and signature of the licensee. The original thereof shall be delivered to the licensee and the duplicate shall be preserved by the people issuing the same for [2] ***4*** years. The license shall be issued within 14 days after application therefor, and, if such application is denied, the reason for such denial shall be stated in writing, the original of which such writing shall be delivered to the applicant, and a copy thereof kept in the office of the person to whom the application was made. The fee for licenses issued to residents of the state shall be [$4] ***$10,*** which fee shall be for the use of the law enforcement department of the town granting said licenses; the fee for licenses granted to out-of-state residents shall be [$10] ***$20,*** which fee shall be for the use of the state. The director of state police is hereby authorized and directed to prepare forms for the licenses required under this chapter and to supply the same to officials of the cities and towns authorized to issue said licenses. The cost of said forms shall be paid out of the fees received from nonresident licenses.

SENATOR PODLES: Mr. President, HB 671 extends the period of a residence and non residence license to carry loaded pistols and revolvers from two years to four years. The gun owner will benefit from the less frequent requirement for the license renewal and police officers see this as reducing this work load. This is in line with other states. The amendment on page seven in the calendar increases the residence fee from $4 to $10 and the non residence from $10 to $20. This money goes directly to the town or to the issue municipalities. This will cover the cost of issuing licenses. The committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 682, an act reducing the number of peremptory challenges to jurors available to both prosecutors and defense in a trial for murder in the first degree. Judiciary committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: HB 682 changes the numbers of challenges of prospective jurors for both the defense and the prosecutors from 20 to 15 in first degree murder cases only. The committee heard testimony that by limiting the number of challenges, it gave both an even playing field and the jury selection moves on and doesn't get bogged down. In some cases jury selection can and has taken longer than the actual trial and deliberation process. The committee discussed the possibility of changing the number of challenges for all murder cases, including capital, but decided because of the nature of the capital murder charges, that number should not be changed. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Pignatelli moved to have SB 61 an act relative to substitution of alternate jurors after final submission of a case to the jury, taken off the table.

Adopted.

SB 61, an act relative to substitution of alternate jurors after final submission of a case to the jury.

SENATOR PIGNATELLI: SB 61 was a bill allowing the court to substitute alternate jurors after deliberations had begun. It came out of a case that was heard in the Nashua area where a case was dismissed because an alternate juror was substituted and it was determined to be illegal. When I brought this bill forward there was some question in the Judiciary committee about the constitutionality of this bill and it was sent over to the Supreme Court with some questions, regarding the constitutionality. I recently have received a communication from the court finding the bill constitutional and would request that we pass the bill and pass it over to the House and hold a hearing over there and, hopefully, it will become law very soon.

Adopted.

Ordered to third reading.

Request of the Senate

No. 93-137

OPINION OF THE JUSTICES

(Alternate Jurors)

April 19, 1993

The following Resolution No. 5, requesting an opinion of the justices, was adopted by the Senate on March 4, 1993, and filed with the Supreme Court on March 9, 1993:

"Whereas, there is pending in the Senate, SB 61, 'An act relative to substitution of alternate jurors after final submission of a case to a jury;' and

"Whereas, SB 61, proposes to amend RSA 500-A:13 to establish procedures allowing an alternate juror to be substituted after the final submission of a case to the jury in either a civil or criminal case; and

"Whereas, the New Hampshire Senate, in considering this proposed legislation, is unsure and uncertain as to the constitutionality of the procedure proposed for substitution of alternate jurors after a case has been finally submitted to the jury; and

"Whereas, a Constitutional defect in the procedure for substituting alternate jurors would adversely affect the fair administration of justice and deprive citizens of the right to trial by jury; and

"Whereas, Art. 74, Part II of the New Hampshire Constitution authorizes the Senate to request an opinion of the Justices of the Supreme Court upon such important questions of law pending and awaiting consideration and action by the Senate; now, therefore, be it:

"Resolved by the Senate:

"That the Justices of the Supreme Court be respectfully requested to give their opinion on the following questions of law:

1. Is the procedure for substitution of an alternate juror after a civil case is finally submitted to the jury, as proposed in SB 61, permitted by the provisions of Art. 20, Part I of the New Hampshire Constitution, which guarantees the right of trial by jury in civil cases?

2. Is the procedure for substitution of an alternate juror after a criminal case is finally submitted to the jury, as proposed by SB 61, permitted by the provisions of Art. 15, Part I of the New Hampshire Constitution, which guarantees the right of trial by jury in criminal cases?

3. Is the procedure proposed by SB 61 otherwise permitted by the New Hampshire Constitution?

That the senate clerk transmit a copy of this resolution to the Justices of the New Hampshire Supreme Court."

The following response is respectfully returned:

To the Honorable Senate:

The undersigned justices of the supreme court now submit the following replies to your questions of March 4, 1993. Following our receipt of your resolution on March 9, 1993, we invited interested parties to file memoranda with the court on or before April 5, 1993.

Senate Bill (SB) 61 proposes to amend RSA 500-A:13 (1983). The proposed amendment would alter RSA 500-A:13, III to eliminate the language which requires that alternate jurors be discharged upon final submission of the case to the jury, and would add a final sentence that reads:

> "At the final submission of the case to the jury, any remaining alternate jurors who have not been substituted under paragraph IV, shall be kept separate and apart from the other jurors in an appropriate place, subject to the same rules and orders as the jurors, until the jury has agreed upon a verdict or has been otherwise discharged."

In addition, the proposed amendment would add a new paragraph to read:

> "V. If, at any time after the final submission of the case to the jury, and before the jury has agreed on a verdict, a juror becomes incapacitated, is disqualified or dies, the presiding justice may order him to be discharged and direct the clerk to place the names of all of the remaining alternates in a box and draw the name of an alternate, who shall then take the place of the discharged juror on the jury. Before making a substitution, the presiding justice shall make a finding on record that the substitution will not cause prejudice to any party. The presiding justice shall instruct the jury to recommence deliberations and shall give the jury such other supplemental instructions as may be appropriate. The jury shall then renew its deliberations with the alternate juror."

SB 61 is a response to this court's decision in State v. Dushame, 136 N.H. 309, 616 A.2d 469 (1992), in which we held that RSA 500-A:13 "does not permit the trial court to retain or recall alternate jurors and reconstitute the jury during the course of deliberations." Id. at 314, 616 A.2d at 472. This conclusion was based on the statutory language under section III that, if alternate jurors are not substituted under section IV, they "shall be discharged upon final submission of the case to the jury." Id. We stated, however, that "[w]e do not here consider the constitutional implications of late substitution, and we express no opinion concerning possible future legislative initiatives that may be considered with respect to the use of alternates after deliberations have begun." Id.

Your first question asks whether the procedure for substitution of an alternate juror after deliberations have begun as set forth in SB 61 is permitted by the provisions of part I, article 20 of the New Hampshire Constitution (right to jury trial in civil cases), while your second question asks whether it is permitted by the provisions of part I, article 15 (right to jury trial in criminal cases). We answer both questions in the affirmative and conclude that substitution of alternate jurors after deliberations have begun is constitutionally permissible when procedural mech-

anisms are utilized to protect the parties' rights. We note, however, that while constitutional on its face, SB 61 could be applied in a manner which is unconstitutional.

RSA 500-A:13 provides that alternate jurors are selected and empaneled in the same manner as the regular jurors. The alternate jurors are sworn and seated near the jury with equal opportunity to see and hear the proceedings. They are required to obey all orders and admonitions of the court, and when the court orders that the jurors be kept together, the alternate jurors must also be kept with them. Alternate jurors receive the same compensation as regular jurors and are liable as a regular juror for failure to attend trial or obey any order or admonition of the court. SB 61 further provides that after final submission of the case to the jury for deliberations, the alternates are to be sequestered apart from the deliberations. If the trial court determines that there is a need, it may call an alternate and must then instruct the jury to begin deliberations anew.

SB 61 is designed to promote the public's interest in judicial efficiency "by avoiding unnecessary retrials when a juror who is participating in a case becomes unable to continue." Tanner v. State, 242 Ga. 437, 438, 249 S.E.2d 238, 240 (1978). Similar statutes in other jurisdictions have been sustained against constitutional challenge provided, that before a juror is excused from deliberations and replaced by an alternate juror, the trial court determines that there is a meritorious reason why a particular juror should not continue to serve and that the jury is instructed in unequivocal terms that it is to begin its deliberations anew. See Commonwealth v. Haywood, 377 Mass. 755, 388 N.E.2d 648 (1979); People v. Collins, 17 Cal. 3d 687, 552 P.2d 742, 131 Cal. Rptr. 782 (1976), cert. denied, 429 U.S. 1077 (1977).

Concerns about substitution of an alternate juror after deliberations have begun focus primarily on protecting the right of the defendant to have each juror arrive at his or her own decision after careful independent consideration of the law and evidence and after engaging in all of the jury's deliberations. As stated by the California Supreme Court regarding post-deliberation substitution in a criminal case:

> "The requirement that 12 persons reach a unanimous verdict is not met unless those 12 reach their consensus through deliberations which are the common experience of all of them. It is not enough that 12 jurors reach a unanimous verdict if 1 juror has not had the benefit of the deliberations of the other 11. Deliberations provide the jury with the opportunity to review the evidence in light of the perception and memory of each member. Equally important in shaping a member's viewpoint are the personal reactions and interactions as any individual juror attempts to persuade others to accept his or her viewpoint. The result is a balance easily upset if a new juror enters the decision-making process after the 11 others have commenced deliberations."

People v. Collins, 17 Cal. 3d at 693, 552 P.2d at 746, 131 Cal. Rptr. at 786. Requiring that the trial court instruct the jury to set aside and disregard all past deliberations and begin deliberating anew is, therefore, essential to satisfying the defendant's constitutional right to a fair and impartial jury. See Griesel v. Dart Industries, Inc., 23 Cal. 3d 578, 591 P.2d 503, 153 Cal. Rptr. 213 (1979). We note that prior to substitution of an alternate juror, a finding should be made on the record that the alternate juror has not been tainted subsequent to the original panel retiring to deliberate. In addition, the remaining jurors should affirmatively state that they can and will start the deliberations anew, United States v. Phillips, 664 F.2d 971 (5th Cir. 1981), cert. denied, 457 U.S. 1136 & 459

U.S. 906 (1982), and the trial court should find on the record that, taking into consideration the circumstances of the particular case, recommencing deliberations is practically feasible. See State v. Miller, 76 N.J. 392, 407, 388 A.2d 218, 225 (1978).

An additional concern is that the discharge of a particular juror be for a meritorious reason. See Commonwealth v. Connor, 392 Mass. 838, 844-45, 467 N.E.2d 1340, 1346 (1984) (good cause includes only reasons personal to the deliberating juror, having nothing to do with the issues of the case or with the juror's relationship with fellow jurors). "The discharge of a deliberating juror is a sensitive undertaking and is fraught with potential for error. It is to be done only in special circumstances, and with special precautions. Great care must be taken to ensure that a lone dissenting juror is not permitted to evade his responsibilities." Id. at 843, 467 N.E.2d at 1345; see Isaacs v. State, 259 Ga. 717, 386 S.E.2d 316 (1989) (no error in substituting alternate juror after deliberations had begun when original juror fainted, was taken to hospital, and was physically unable to continue), cert. denied, 497 U.S. 1032 (1990); People v. Guzman, 66 Cal. App. 3d 549, 136 Cal. Rptr. 163 (1977) (trial court erroneously substituted alternate juror where original juror made a vote-bartering proposal; a mistrial should have been declared instead). The trial court should, prior to excusing a juror from deliberations, ask questions of the juror and make findings on the record that not only establish a meritorious reason for such discharge, but eliminate improper reasons as suggested above. See Commonwealth v. Haywood, 377 Mass. at 769, 388 N.E.2d at 657.

The principles set forth above pertain to civil as well as criminal cases. See Griesel v. Dart Industries, Inc., 23 Cal. 3d at 584, 591 P.2d at 506, 153 Cal. Rptr. at 216. The provisions of SB 61 governing the substitution of jurors are identical in both criminal and civil cases. "The same considerations require that each juror engage in all of the jury's deliberations . . . [and] reach their consensus through deliberations which are the common experience of all of them." Id. Therefore, procedural safeguards also must be applied in civil trials to insure that the statute's provisions are constitutionally applied.

We note that our response "is necessarily qualified." Opinion of the Justices, 134 N.H. 266, 279, 592 A.2d 180, 188 (1991). "Because it is impossible to anticipate the myriad fact patterns which may arise and test the limits of [SB 61], we cannot guarantee that we have been able to address every possible issue that may be raised under article[s] [15 and 20]." Id. (quotation omitted).

Finally, we respectfully decline to answer your third question, whether SB 61 violates any other provision of the New Hampshire Constitution, because of its generality. See Opinion of the Justices (Weirs Beach), 134 N.H. 711, 717, 598 A.2d 864, 867-68 (1991).

DAVID A. BROCK

WILLIAM F. BATCHELDER

WILLIAM R. JOHNSON

W. STEPHEN THAYER, III

SHERMAN D. HORTON, JR.

April 19, 1993

Jeffrey R. Howard, attorney general (William H. Lyons and Stephen J. Judge, senior assistant attorneys general, on the memorandum), filed a memorandum in support of affirmative answers to the questions presented.

Albert E. Scherr, assistant appellate defender, of Concord, filed a memorandum in support of a negative answer to question number two.

HB 216, an act allowing owners of homes destroyed by natural disaster to place temporary manufactured housing on the lot while the home is being rebuilt. Public Affairs committee. Ought to Pass with Amendment. Senator Pignatelli for the committee.

2457B

Amendment to HB 216

Amend the title of the bill by replacing it with the following:

AN ACT
allowing owners of homes damaged by disaster to place temporary manufactured housing on the lot while the home is being rebuilt.

Amend RSA 674:32, II as inserted by section 1 of the bill by replacing it with the following:

II. Notwithstanding paragraph I or any law or rule to the contrary, no zoning ordinance or bylaw shall prohibit an owner and occupier of a residence which has been damaged by fire or other disaster from placing a manufactured home on the lot of such residence and residing in such structure while the residence is being rebuilt. The period of such occupancy shall expire in 12 months from the placement of such structure or upon the issuance of a certificate of occupancy, whichever occurs first. Any such manufactured home shall be subject to state and local requirements relating to water supply and sewerage disposal. A manufactured home that is placed on a lot under this paragraph shall not attain the status of a vested nonconforming use.

AMENDED ANALYSIS

This bill allows owners of homes damaged by fire or other disaster to place temporary manufactured housing on the lot while the home is being rebuilt. Such housing shall not remain on the lot for longer than 12 months or until a certificate of occupancy is issued, whichever occurs first, and shall be subject to all applicable requirements relating to water supply and sewage disposal.

SENATOR PIGNATELLI: This bill is intended to allow a person who has lost his home through an act of God or nature to put up temporary housing, movable temporary housing, on the lot while a new house is being constructed for a period of up to one year. We respectfully ask for your approval.

Amendment adopted.

Ordered to third reading.

HB 238, an act authorizing a member of a cooperative school district to serve on a town budget committee. Public Affairs committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This bill simply permits a member of a cooperative school district to serve on a town budget committee. It was found that there was no conflict. The budget committee merely passes the budget figure on and there is no conflict. This would allow those people who might be chosen for either position to serve. The committee voted ought to pass. It passed the House by 17 to 0 in their committee. Thank you.

Adopted.

Ordered to third reading.

HB 307, an act permitting municipalities to contract with their road agents without competitive bidding. Public Affairs committee. Inexpedient to Legislate. Senator Barnes for the committee.

SENATOR BARNES: A lot of our towns have elected road agents. The reason that a lot of folks run for road agent jobs is that they are in the construction business and/or they have the equipment at the disposal of themselves or their immediate family. The committee felt that if we had this in, it could put a person in a very serious disadvantage supposing two folks that had the same business in town ran and the loser is just about out of business, he wouldn't have any chance at all to bid on the town work. So the committee would ask you to go along with the inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 335, an act relative to listing the names of candidates on ballots used in voting machines. Public Affairs committee. Ought to Pass with Amendment. Senator Pignatelli for the committee.

2461B

Amendment to HB 335

Amend RSA 656:44, II as inserted by section 1 of the bill by replacing it with the following:

II. [No] ***If it becomes necessary due to the number of candidates, the*** name of a candidate of any party for any office [shall] ***may*** be placed beneath the name of another candidate of the same party for the same office [unless the listing of all names of all candidates for all offices on that ballot is vertical and not horizontal]. ***The placement of the names of candidates on the primary ballot according to the provisions of this paragraph shall be made in consultation with and approved by the secretary of state, and shall be made in such a way so as to minimize any advantage one candidate may have over another candidate.***

AMENDED ANALYSIS

This bill provides that if it becomes necessary due to the number of candidates, the name of a candidate of any party for any office may be placed on the primary ballot beneath the names of other candidates of the same party for the same office. This placement of candidate's names on the primary ballot shall be made in consultation with and approved by the secretary of state, and shall be made in such a way so as to minimize any advantage one candidate may have over another candidate.

SENATOR PIGNATELLI: This bill came about because of our voting machines in Nashua. It is against the law to use the second row of a machine. Most people's machines go straight down and you have an almost unlimited number of spaces. Our machines in Nashua go across, so if more people run then there are spaces across, we need to have paper ballots. We had to have that last year and it was very inconvenient. So this bill would allow names to go on a second row on the machine should more people run then can fit on the first row. The amendment has us working with the Secretary of State and obtaining his approval for this second row to be used. We ask for the passage of this bill with amendment.

SENATOR COLANTUONO: Senator Pignatelli, a simple question? How does the Secretary of State determine who goes on the second row and who goes on the first row?

SENATOR PIGNATELLI: I believe that it is alphabetical, I am not positive. Cecelia Winn's name was on the second row a while back since her name starts with a W, I am pretty sure it is alphabetical.

SENATOR COLANTUONO: Did she win or lose?

SENATOR PIGNATELLI: This law came about because she was on the second row and she thought that she did not get the votes that she deserved because she was on the second row, so actually this law came about because of what happened in Nashua. I am asking that we change it because of something that came about in Nashua this past year. This is a problem with our machines and from what I understand, we are working on getting some machines that will not cause problems either way. Money is a problem.

SENATOR LAMIRANDE: I know that you must have different districts and in the Berlin area we have different wards, okay. In one ward there might be the one name on the top and the other name on the bottom and then it would be reversed in another ward so that it shows equal fairness. I believe that that is the case probably in Nashua also. It is not a matter of designating who goes on first or second, it is just in different wards, they will switch around so that there is equality involved.

SENATOR PIGNATELLI: Well I can tell you that when I ran for this seat, my seat was in the first position in some wards and second in others and third in others. The problem was that there was so many names that they couldn't fit on one row on our ballot so some of them had to go underneath.

Amendment adopted.

Ordered to third reading.

HB 349, an act requiring that selectmen or assessing officials be allowed access to property as a prerequisite to appeal of any matter pertaining to a property tax. Public Affairs committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: As more and more communities update their assessments through reevaluation of the properties, a certain number of individuals refuse to let the assessors enter the property in order to access it. Once the value of the property is set, many times those same individuals challenge the accuracy of the value. The effect of the bill is simple, the effect of the challenge of course is simple and costly as well. Passage of HB 349 would preclude an individual property owner from appealing the property assessment until an assessor is allowed to enter the property

and reconsider the initial assessment and any potential mistakes made in determining it. The committee voted ought to pass.

Adopted.

Ordered to third reading.

HB 353, an act relative to the Police Commission in the town of Conway. Public Affairs committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: This bill clarifies the authority of the Conway Police Commission to hire and set compensation for police personnel and staff who are not police officers. Currently the Police Commission in Conway has authority over the sworn personnel and the Police Department. The selectmen have the authority over the non sworn personnel and so on the advice of their town council, they thought that they ought to correct this matter legislatively. I urge passage of this bill.

Adopted.

Ordered to third reading.

HB 464-FN-A, an act recognizing merchant marines who served in World War II as World War II veterans. Public Affairs committee. Ought to Pass with Amendment. Senator Barnes for the committee.

2462B

Amendment to HB 464-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT

recognizing merchant marines who served in World War II as World War II veterans, and prohibiting service-connected disability payments or social security disability payments from being used in the calculation of alimony.Amend the bill by replacing all after section 1 with the following:

2 Military Disability Payments and Social Security Disability Payments Exempted. Amend RSA 458:19, IV to read as follows:

IV. The court may make orders for alimony in a lump sum, periodic payments, or both. In determining the amount of alimony, the court shall consider the length of the marriage; the age, health, social or economic status, occupation, amount and sources of income, the property awarded under RSA 458:16-a, vocational skills, employability, estate, liabilities, and needs of each of the parties; the opportunity of each for future acquisition of capital assets and income; the fault of either party as defined in RSA 458:16-a, II(l); and the federal tax consequences of the order. In determining amount and sources of income, the court shall not consider a minor child's social security benefit payments [or], a second or subsequent spouse's income, ***United States military disability payments, or social security disability payments.*** The court may also consider the contribution of each of the parties in the acquisition, preservation, or appreciation in value of their respective estates and the non-economic contribution of each of the parties to the family unit. In any proceeding for modification of an existing alimony order, the earned or unearned income and social security disability payments of a spouse of the obligor party shall not be considered a source of income to that obligor party for

the purpose of modification, unless the obligor party resigns from or refuses employment or is voluntarily unemployed or underemployed, in which case the income of a subsequent spouse may be imputed to the obligor party only to the extent that such obligor party could have earned income in his or her usual employment.

3 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill recognizes persons who served in the merchant marine during World War II as World War II veterans. Merchant marine World War II veterans qualify for veterans' property tax credits under RSA 72 and for other veterans' preferences granted by statute, but are not eligible for the bonus payments paid other World War II veterans.

This bill also exempts military disability payments and social security disability payments from being included in the calculation of alimony.

SENATOR BARNES: The argument is that the Merchant Marines have been certified by the Secretary of Defense as active military service for the purpose of eligibility for Federal Department of Veterans Affairs Benefits. The committee felt that the state of New Hampshire should do the same for the Merchant Marines. The committee recommends ought to pass.

Amendment adopted.

Ordered to third reading.

HB 500, an act relative to the obligations of lessees of publicly owned property for the payment of property taxes. Public Affairs committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This bill came about as a result of the attempts to save business tenants at the Nashua Airport from what many felt was a double taxation. The established businesses that spent several years paying personal property taxes on the buildings that they own and lease payments on the airport land that they leased. The lease payments were roughly equivalent to what other properties were paying in taxes on the land, lease payments supported the Airport Authority in this role of supplying the infrastructure and so forth. This simply protects those people by requiring that the tax obiligation be included in the lease agreement. The committee voted ought to pass.

Adopted.

Ordered to third reading.

HB 522, an act relative to the observance of Memorial Day. Public Affairs committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: This bill will change the date of Memorial Day from May 30 to the last Monday in May or with the same date of the federal observance if it is to be held on a different day. I am reminded of a movie that I saw several years ago and on it there was an answering machine that picked up and the message was, "this is a machine, you know what to do". All of us have heard a lot about this bill, for many years for some of us, and we all will vote the way that we want and many of us will have very good feelings, very good reasons, and some very emotional for choosing to vote the way that we do. I urge passage of the bill. Thank you.

SENATOR BLAISDELL: Mr. President and members of the Senate, I rise in support of the committee report, Senator Pignatelli. For years I

have stood on this Senate floor and have voted the opposite way. It is my opinion that the time has come. I in no way would want to detract from this day. I think that in the last session of the legislature I stood on the floor of this Senate and showed you a plaque that I received from my father 75 years after he received his purple heart. I was very proud of that. I would just hope that my vote today to change this day, I am sure that it is going to anger some people, but I think that the time has come. I lost my father at the age of 46, he was gas wounded and shell shocked in World War I, so no one has to tell me what this day means. There isn't a day that goes by that I don't look at the wall in my home with that plaque, with my father's name on it and his purple heart and everything else. So I guess reluctantly, I stand here to tell you that I will vote for the committee report to bring as some people have told us, to bring families together. I just ask that if those families remember what these men and women did for us in World War I and II and all of the other wars that followed, that we will certainly remember them and we really don't have to have a certain day. We can always remember them in our hearts what we feel for these people and the sacrifices that they made. So reluctantly as I say, I stand here on the floor of this Senate today and I will vote with the committee report, maybe with a heavy heart, but again, everyday that goes by is a memorial day for my father and I want all of you to know that.

SENATOR LOVEJOY: I find that I must rise to speak in behalf of those veterans in the district six who presented me with petitions of several hundred names of them that came and they oppose this bill. They asked me if I would represent them in opposing this bill and if I would present to you their feelings. That Memorial Day wasn't designed to be a day that would just be a day off. It wasn't designed to be another day for traffic in the malls or the supermarkets. It was a day to stop and remember about those lives of those brave men and women of all races and of all nationalities who fought over all of these years to see that we could achieve and so that we could enjoy the legacy that is ours because of their sacrifice. They asked me to tell you that just to have a day off doesn't really focus on what that day off is for. They asked me to tell you how important it is that we pass this legacy on to our children so that this day, this Memorial, this remembrance, this gratitude, for our lives as we know it, here in this great nation of ours, came with a big sacrifice on the parts of all of those who have gone before us. I urge you to vote against this bill and to retain Memorial Day in its present form, a day that we stop and remember, and we stop and pay tribute, and we stop and give thanks to all of those who have made the great sacrifice for us. Thank you.

SENATOR COHEN: In the past I have opposed a similar bill. I have been working with veterans' groups to try and create a Veterans' Cemetery in the state of New Hampshire, something that must be done. I recognize that there is some opposition from some people in some Veterans' groups. I have had similar questions as to making sure that this is not just another day off, this is not just another day for commerce. I have supported Memorial Day as a separate day because this is a different holiday. People really need to stop and remember and think about those who have made the ultimate sacrifice to preserve all that we value. But since then I have come to recognize that families are divided right now, people are not able to celebrate this together with their parents or their children. This is too important a holiday to keep people apart. We should allow

them to celebrate this holiday together. This is not just another day for pleasure or for commerce, but this is a day to remember and observe the sanctity of the day and to recognize those who have made the ultimate sacrifice for the freedoms that we all treasure. So I do now support this bill.

SENATOR COLANTUONO: Mr. President, the federal government, and as far as I know 48 states celebrate Memorial Day on the fourth Monday of May every year. I support this bill because where I live, many of my constituents work in Massachusetts and take the Massachusetts or the federal holiday. Echoing what Senator Cohen said, families in my district are divided. The father might have one day off and the mother might have another day off and the child might have a different day off because the school district doesn't go by the state holiday and it is really a sad situation because what we are having is that there is no meaningful Memorial Day in New Hampshire right now. I strongly support the change so that all of the families can get together and celebrate Memorial Day in a meaningful way. I was a co sponsor of the bill last session to help set up a Veterans' Cemetery over at Pease and I am happy to work with Senator Cohen on that issue. Memorial Day under this bill will not just be a day off, it will be a day when people can get together and have a decent parade. Right now you can't even put together a decent parade in my district because there is no one around to either march in it or to watch it. I hope that you all saw Sue Farretra's research that she left in our box that talked about how the tradition of Memorial Day started because the grand army of the republic established the 30th day of May in 1868 as a day for decorating graves. It is important to realize that nothing of historical significance happened on the 30th day of May in our country's history. It has just been a traditional day to set aside for our veterans and the people who fought in the wars. We can do that on any appropriate day. As a matter of fact, I had my intern look up what day of the week that was and it was a Saturday. So you could just as easily argue that the fourth Saturday of May should be Memorial Day. So because of that fact and because the entire rest of the country celebrates Memorial Day now in a meaningful way on the fourth Monday of May except for New Hampshire, and I believe Vermont, I support this bill.

SENATOR FRASER: Mr. President and my colleagues in the Senate, I have been a legionnaire since 1946. Since 1972 I have been carrying the flag in our Memorial Day parade. Prior to the change in the federal law this was a great deal in the town of Pittsfield. We would have the streets lined with people, we would have two or three bands; and yet once the federal law changed, aside from the color guards, there's quite often not too many other people out there. To address Senator Lovejoy's comments, I think that he hit it right on the head. It is to make aware to the people of this state as to the meaning of Memorial Day as a rememberance of those veterans who died in the several wars. To me, to support the change of the committee's report is essential in order to create that awareness. Because if we are all celebrating on the same day, we are certainly going to get a lot more people coming out to learn what Memorial Day is all about. I just wanted to say that when we parade in Pittsfield, which we do on every Memorial Day, we stop at the nonsectarian cemetery and we have a minister of the cloth speak to us there, we stop at our monument and we have some one else speak to us and then we march to the Catholic cemetery and we have a Catholic priest speak to us and they are all on the same vein of trying to remind people as to what Memorial Day is all about. Unfortunately, since the federal law was changed, Mr. President,

we don't have very many people come anymore. So for the very reason that Senator Lovejoy opposed the bill, I support it so that we can once again restore the sensitivity of the people in the community as to what Memorial Day is all about. I urge the Senate to adopt the committee report.

SENATOR BARNES: I am going to make it very quick. I have two points that I would like to make to you. Number one, if I thought that putting this day with the national holiday would bring families together, I probably would vote with those folks; however, the last 20 or so years, my wife and I have traveled the five cemeteries, three of them are in Massachusetts and we hit those on the federal holiday. Guess what? In the old days there used to be lines of cars to go into the cemeteries, now what do you find in there? Nothing. My wife and I are kind of lonely when we go into those cemeteries in Massachusetts. If that federal holiday brought families together to go and honor the dead, those cemeteries would still be full. But I got news for you, they are at the beach or they are at the ball game or they are somewhere else. They are not out honoring the dead. In New Hampshire, same thing. We go on our New Hampshire day and we don't see a lot of people at the cemeteries in New Hampshire either. We want to talk about parades, I'll bet you, I'll bet you that by moving this holiday that it doesn't do a darn thing to increase the number of people in your parades or standing there taking their hats off and saluting Old Glory as it goes down the street. Times have changed, unfortunately, some of us older folks, I guess, time is passing us by perhaps. But I do not believe that any of that is going to happen. The family get-together, hey forget about that. The family togetherness that is not really an issue and it doesn't happen in Massachusetts and it isn't going to happen here. Second point to make, I have heard another argument. I have seen it in the paper, I have seen it on television, oh the business community, the chamber of commerce in one of the towns came in before our committee and gave testimony, oh we have to have it. Let me say this to you, I am a business man, a small business man, and yes, when the holidays are on Monday, we do do more business, but to some people in business, tradition and honoring the dead on the 30th of May and other such items that are more important to us than George Washington in our billfolds. I urge you to vote against this bill. Thank you very much.

SENATOR SHAHEEN: Senator Barnes, this bill may not bring families together, but I know at least one community that is going to celebrate Memorial Day if we pass this bill and that is the town of Durham. Last year I got a resolution from the town council in Durham and what they said was that because of the difficulty with the federal holiday being celebrated on one day and the state being celebrated on another, that year for the first time in the history of Durham, since they have been celebrating Memorial Day, they felt that they needed to cancel their Memorial Day parade because they were not able to get enough people to actually march in their parade. They want the state to celebrate the holiday the same time that the rest of the country does because they want to reinstitute that parade and be able to celebrate Memorial Day. I believe, despite what you said, I believe that when we change this holiday and go with the rest of the nation, that the town of Durham is going to put their Memorial Day parade back.

SENATOR BARNES: Would you believe that I was a resident of Durham for four years and enjoyed it very much, but would you do us a favor? Would you let us know, the Senate know, after that parade how many

more people showed up for it than they did two years ago when you had your parade. Would you be kind enough to share the numbers with us?

SENATOR SHAHEEN: Senator Barnes, the next Memorial Day parade that we have I am going to invite you to march with me in it.

SENATOR BARNES: Would you believe that I hope that there is someone there to applaud you and me?

SENATOR SHAHEEN: I am going to bring my kids.

Adopted.

Ordered to third reading.

Senators Barnes, Disnard, Lamirande, Lovejoy, MacDonald and Wheeler in opposition to HB 522.

Senator Baldizar in favor of HB 522.

HB 543, an act allowing municipalities to combine the offices of tax collector and treasurer. Public Affairs committee. Inexpedient to Legislate. Senator Barnes for the committee.

SENATOR BARNES: I would like to say that on this HB 543 that we the committee felt that this could propose a problem with the checks and balances as of accounting in the cities and in the towns. Yes, you could have an accounting and an audit of this to take place, but it could be very costly to some of the smaller towns. The committee recommends that the HB 543 be inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 600-FN-LOCAL, an act relative to candidates who seek nomination by nomination papers. Public Affairs committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: HB 600 addresses two issues facing those political candidates who are out there getting petitions. It deals with the cities and towns who either fail to deal with nomination petitions or they take too long to return to the candidate and too late to be received by the Secretary of State. The second difficulty is that it could be encountered in canvasing cities and towns to get the petition signed by requesting regulations or in one case as the person that brought the bill before us said, and he had to get a peddler's license so that he could get his petitions in that city. The bill prohibits licensing and regulating political candidates seeking petitions and the cities and towns must address their signatures to petitions in a much more timely manner. Thank you, Mr. President, we urge ought to pass.

Adopted.

Ordered to third reading.

HB 693, an act legalizing the actions of the Kingston town meeting. Public Affairs committee. Ought to Pass. Senator Barnes for the committee.

SENATOR BARNES: I move ought to pass.

Adopted.

Ordered to third reading.

CACR 9, a resolution relating to a 4-year term for the office of Governor. Providing that the Governor shall be elected every 4 years. Public Affairs committee. Inexpedient to Legislate. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This CACR 9 called for a question to be put on the ballot that would lengthen the Governor's term from two years to four years. The committee after hearing the testimony, deliberating and discussing it, felt that it should be inexpedient to legislate and that is what the committee recommends.

SUBSTITUTE MOTION

Senator Disnard moved to substitute ought to pass for inexpedient to legislate.

SENATOR DISNARD: Mr. President and members of the Senate, I have a problem here with the committee report. Here we are saying that we represent the people but we do not want them to have an opportunity to vote on a constitutional amendment where they think their Governor, our Governor, should be allowed a four-year term. I feel the same way regarding term limits. Here, the House, and we may in the future, say that the people of this state should not determine whether the New Hampshire Senators, New Hampshire Representatives should have term limits. But it is okay for us to say and not allow the people to, but it is okay for us to say, the Senators at the federal level and the Representatives at the federal level should have term limits. I have a concern about that. I believe that we should allow the people to make that choice. If you accept my motion of ought to pass I have a floor amendment.

SENATOR COLANTUONO: I would like to make one small point in rebuttal to the motion. I generally agree with Senator Disnard that we should be giving the public opportunities to vote on all kinds of issues, but this is an issue of amending our Constitution. Our Constitution is a sacred document that has worked extremely well for the state of New Hampshire over the years. I would say that New Hampshire has one of the best if not the best state government in the whole country. I don't think that you lightly change a Constitution that gives a state one of the best state governments in the country unless there is a real demonstrated problem with the way that it is working. I haven't had one constituent say that they think that this bill is a good idea. Furthermore, in the last election our voters had a chance to vote on whether we were going to have a constitutional convention and they voted no. The voters by a majority vote of this state said that we don't think that there is anything that we should be changing in our Constitution never mind this particular piece. Beyond that, I think that it is clear that one of the reasons that we have a great government is because we have an executive who has to account to the people every two years. I think that that is one of the best features of our state Constitution. I would urge the body to vote against the substitute motion of ought to pass.

SENATOR HOLLINGWORTH: Senator Colantuono, I don't know because I didn't attend the hearing so I don't know what happened at the hearing, but wasn't the question at all raised about what it costs every two years to have a Governor run for election? I mean it seems to me that the cost of that alone would be a good reason why we would, should, give the question to the public whether they think that a Governor should be in for four rather than for just two years?

SENATOR COLANTUONO: I wasn't on the committee so I can't speak to what the question was. But with regard to that, since you have asked me that question, no one is forced to give a political contribution. And if they think that it costs too much to give every two years then they can stop giving.

SENATOR FRASER: Mr. President, as you can see I am one of the cosponsors of the bill and the reason that I agreed to cosponsor this legislation was because it was always my impression that a new Governor, especially, it takes him a year to learn what it means to be the chief executive of New Hampshire and then he spends his second year of his term campaigning to be reelected. As Senator Hollingworth very clearly pointed out, it is extremely expensive, and I think that there was some testimony at the public hearing addressing this part of the concerns. Mr. President, I have forgotten the year, but the last time that this was a referendum article on the ballot, it was about the mid 1980's and at the time I think that it was about 64 percent of those who cast ballots in that particular election supported a four-year term for the Governor. It has been on the ballot, I think, three times in the last 25 years and every year it has gotten closer to the 2/3 majority that is needed in order to have the Constitution amended. It is my view, Mr. President, that this is good legislation. As Senator Disnard has already pointed out, all that it does is give the electorate the opportunity to determine whether or not they think a two or four year term would be appropriate.

SENATOR LOVEJOY: I also generally would agree with Senator Disnard's position of going with the people. Matter of fact, I think that my record as long as I have been a member of this body will bear out that I believe in citizen control and going to the people; however, I will point out to you that we do go to the people every two years for their blessing on the governor and it has worked well. And if the people approve and that is the referendum of approval, if the people approve then we have a governor that goes on for another two years. That system has worked real well; however, I don't think that we have elected a governor, certainly not to my knowledge, that has served eight years. We have had several governors who have served for three two-year terms for six years and with this four-year term, we would be giving a governor eight years, two years longer than the people have ever done it, just with one reelection. I don't see as there is anything wrong with going to the people every two years for their blessing. In fact, I would point out to you that it is my belief that this keeps the politicians sharper. It keeps them in closer contact with the people and it keeps the people constantly being represented in matters of governmental affairs. I strongly oppose the amendment and support the effort to keep the two-year term for our governors in the state of New Hampshire.

SENATOR DISNARD: Senator Lovejoy, excuse my question, I am not being facetious. A strong conservative man like you representing the people which I have heard you say, the people have a chance to speak. Are you saying now that you have changed your mind and do not want the people in New Hampshire to vote whether they want a four-year term for a Governor?

SENATOR LOVEJOY: No, sir. I didn't say that. What I said is that the people have a vote every two years now in which they approve of a governor or they send him on his way. What I am saying also is that a four year term would give a longer . . . with one reelection would give a longer term to any person that the people have ever adhered to with three elections. I think that New Hampshire has a uniqueness that we can be proud of and we have a history that we can be proud of and we have a government that isn't broke and I don't see any need to fix it.

SENATOR SHAHEEN: As a Democrat in a Republican state like New Hampshire one would suppose from a purely political perspective that I

would support a two-year term; because obviously it would mean that the seat for governor is open more often. Which would mean that Democrats would have a shot at it more often, but I have to tell you that I don't believe that. Because what I think that what we want to look at is good government here. As a student of political science in my college days, one of the things that we learned in state goverment 101 is that the advantage to a longer term, a four year term over a two-year term is that, number one, as Senator Fraser pointed out, it gives whoever is elected some time to learn the job so that they are not . . . if they have the first year to learn the job then they have some time to actually accomplish something in the following years. The other thing that it does is that it gives people an opportunity to work on a program, an agenda for the state and not always have to respond to the latest fad that may be out there in government. I know that that sounds odd but look at what happened after World War II and the Marshall Plan. For those people who say, well elected officials need to do exactly what the electorate wants us to do, everytime on every issue, most of us would look historically at the Marshall Plan and say that that was a good investment for the country to have made. But in fact, after Truman and the congress approved the Marshall Plan at the end of World War II, there is a tremendous amount of objection in the country because people were only looking at it short term for a very short period of time and that changed over the period of several years. I guess that is my point with a four year term for governor. What we are giving that person as governor is an opportunity to sell their agenda to the electorate of the state of New Hampshire and to have some dialogue as opposed to always be operating with a meager kind of reaction to what is going on out there. So I support a four year term. I think that it makes for a better government. And I think that my role as a state Senator ought to be to do whatever I think is going to make for better government.

SENATOR BARNES: The folks in Senate district 17 have an old saying, "if it ain't broke, don't fix it".

Recess.

Out of recess.

Question is on the substitute motion of ought to pass.

A roll call was requested by Senator Wheeler.

Seconded by Senator Disnard.

The following Senators voted Yes: W. King, Fraser, Disnard, J. King, Shaheen, Hollingworth, Cohen.

The following Senators voted No: Lamirande, MacDonald, Lovejoy, Currier, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, McLane, Podles, Barnes, Russman, Bourque, Delahunty.

Yeas: 7 - Nays: 16

Substitute motion of ought to pass fails.

Question is on the committee report of inexpedient to legislate.

Adopted.

CACR 9 is inexpedient to legislate.

HB 125-FN, an act relative to federal funding for rebuilding, modernizing, and maintaining rail properties. Transportation committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

2344B

Amendment to HB 125-FN

Amend the bill by replacing all after section 2 with the following:

3 Appropriation and Use of Special Railroad Fund. Amend RSA 228:69 to read as follows:

228:69 Appropriation and Use of Special Railroad Fund. All moneys including moneys received from ***operating agreements,*** rentals and permit, ***application and renewal*** fees shall be deposited in the special fund established by RSA 228:68 and are hereby appropriated to be expended by the commissioner for the purchase or paying for the operation and the maintenance of railroad properties to be acquired or which have been acquired pursuant to the provisions of this subdivision, subject to the following conditions:

I. An appropriation by the general court; or

II. If an uncommitted balance exists, with prior approval of the [advisory budget control] ***fiscal*** committee and governor and council.

4 New Section; State-Owned Rail Lines. Amend RSA 373 by inserting after section 1 the following new section:

373:1-a State-Owned Rail Lines.

I. In instances where the state has acquired rail properties, the state shall have the same duty as under RSA 373:1 to provide suitable crossings and other facilities for the accommodation of the public and to provide suitable gates, crossings and other facilities for the accommodation of persons whose lands are divided, or are separated from a highway, by the state-owned railway.

II. Any party or landowner seeking crossing or other facilities pursuant to paragraph I shall make application for such crossing or other facility to the department of transportation.

III. The commissioner shall adopt rules, under RSA 541-A, establishing procedures and criteria for review of such applications and issuance of agreements for crossings or other facilities on state-owned rail property, including establishment of reasonable application and annual renewal fees.

IV. Such agreements shall include provision for apportionment of costs for construction and protection including insurance requirements and installation of appropriate safety devices.

5 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill requires that federal funds to be used for particular rail projects be matched by the owner, shipper, or user in cash, labor, or materials in an amount equal to the percentage established by the Federal Railroad Administration of the total amount provided for the particular project.

The bill requires a lien in favor of the state for improvements made to the rail line using state funds. Current law requires such a lien only in the event of sale or abandonment of the rail line.

The bill imposes on state-owned rail lines the same duty imposed upon every other railroad in the state regarding suitable crossings and gates.

SENATOR LAMIRANDE: HB 125 requires that federal funds to be used for particular rail projects be matched by the owner, shipper, or user in cash, labor, or materials in an amount equal to the percentage established by the Federal Railroad Administration of the total amount pro-

vided for the particular project. To put it a little clearer, the bill simply brings us into line with federal law and allows the state to bring in contributions. The Transportation committee recommends that HB 125 be ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 109-FN, an act increasing certain fees and making technical corrections in the Tobacco Tax and Timber Tax. Ways and Means committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: This bill was at the request of the Department of Revenue Administration and it was unanimous out of House Ways and Means. It really is a misnomer in that the fees aren't increased, the time that the fees apply are doubled and the fees are doubled. So they are now two-year five dollar fees on each cigarette machine and the cigarette machines are licensed for two years. There is another small amendment in it relative to the County Severance Timber Tax. It was just an RSA which had not been repealed when they changed that over to counties. So those two small bits are part of this bill and there was no opposition.

Recess.

Out of recess.

Adopted.

Ordered to third reading.

HB 220, an act relative to the committee studying the real estate valuation and revaluation process. Ways and Means committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill deals with the committee studying the real estate valuation and revaluation process. It extends the date to November 1, 1993 and it increases the study committee by one member appointed by the Governor. We recommend ought to pass.

Adopted.

Ordered to third reading.

HB 254-FN, an act relative to the authority of the state Treasurer to void state checks and relative to increasing the fee for checks returned to the state. Ways and Means committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This bill does two things. First it will help the Treasury Department clean up some bookkeeping steps that occur with checks that are not presented for payment with a reasonable amount of time; and second, it will increase the fee on bad checks. Those not intended to be a revenue enhancement measure so much as to recover the cost of what it really costs the state now when a check bounces. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 290, an act establishing priority of real estate tax liens. Ways and Means committee. Ought to Pass. Senator Lovejoy for the committee.

SENATOR LOVEJOY: This is a Municipal Association policy bill that we have always believed historically, that it has been for the municipality or city or towns to have a priority in the real estate lien; however, during the banking crisis and as more and more financial institutions were foreclosing on properties, it has become a rather touchy subject. Just as to the fact as to who has the first priority lien. This will clearly define that. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 601-FN-A, an act exempting from the Real Estate Transfer Tax certain transfers between land trusts and housing cooperatives. Ways and Means committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: This bill was put in at the request of a young man named John Hamilton who is Executive Director of a group called, 'CATCH' which is Concord Authority . . . something to do with housing. This prevents CATCH from paying the transfer tax twice. It is a four year old group that has reconstructed 52 units in Concord. The trust buys the housing, fixes it up and pays the tax, and then sells it to tenants as a Coop so that they won't have to pay the tax twice. There are three similiar organizations in New Hampshire that also buy housing, reconstruct it and sell it for cooperative housing. It is estimated that it will cost $1,800 a year and it is certainly worth it when you look at the housing and the homes that they have provided, particularly in the city of Concord.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

HB 150, an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator Roberge for the committee.

2460B

Amendment to HB 150

Amend the bill by replacing sections 1 and 2 with the following:

1 Hunting After Revocation. RSA 214:21 is repealed and reenacted to read as follows:

214:21 Hunting, Etc. After Revocation; Eligibility for License.

I. No person who has had a license suspended or revoked shall take or attempt to take the wildlife permitted to be taken by said license. A person whose license has been revoked indefinitely or for a period of time under any provision of this chapter shall be ineligible to purchase a new license before the expiration of the stated period without the prior written approval of the executive director. No person shall be eligible to receive any license issued by the fish and game department if he is in arrears for any fines or costs for a violation of the laws relative to fish and game. Any person violating the provisions of this section shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

2 New Section; Hunting While in Default. Amend RSA 214 by inserting after section 21 the following new section:

214:21-a Hunting When in Default; Eligibility for License.

I. No person shall hunt, fish, trap or engage in any activity regulated by this title if such person is in default with any state court for the violation of any section of title XVIII and such person's license to hunt, fish, trap or engage such activities shall be suspended by the executive director.

II. No person shall purchase any license issued by the department if such person is in default with any state court for the violation of any section of this title.

III. Any person who has had a license suspended or revoked pursuant to paragraph I of this section shall apply to the executive director before such license shall be restored.

IV. The executive director shall assess and collect a $50 reinstatement fee against any person whose license is suspended as permitted in paragraph I of this section prior to the reinstatement of said license. This paragraph may be waived by the executive director for just cause.

V. Any person who violates any provision of this section shall be guilty of a misdemeanor.

AMENDED ANALYSIS

This bill modifies the ability to purchase a license after revocation and prohibits hunting, fishing and trapping if the person is in default with any judicial system in the state. This bill also requires the commissioner of safety to suspend a person's license to operate a motor vehicle if such person is in arrears for any fine or costs for the violation of any fish and game statute.

Senator Roberge moved to have HB 150 an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state, laid on the table.

Adopted.

LAID ON THE TABLE

HB 150, an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state.

RESOLUTION

Senators Pignatelli, W. King and Bourque offered the following resolution:

SR 9

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

relative to the U.S. FIRST competition.

Whereas, the U.S. FIRST competition was founded in New Hampshire in 1989 and has blossomed into a national competition; and

Whereas, U.S. FIRST offers young people the opportunity to discover the exciting, rewarding and immensely fulfilling world of science and technology; and

Whereas, in order for the United States to remain competitive with other countries in the future it must interest its young people in developing skills in and meeting the challenge of science, engineering and other technological pursuits; and

Whereas, U.S. FIRST will create a National Hall of Fame of Science and Technology and a series called the FIRST Prize Awards to inspire

young people and to provide recognition to the superstars of science and technology; and

Whereas, New Hampshire can offer buildings and a suitable location to showcase the results of the U.S. FIRST competition; now, therefore, be it

Resolved by the Senate:

That the New Hampshire Senate hereby urges the executive committee and the board of directors of U.S. FIRST to locate the Science and Technology Hall of Fame in New Hampshire;

That the national competition remain in New Hampshire; and

That copies of this resolution be sent to U.S. FIRST, 340 Commercial St., Manchester, NH 03101-1108.

SR 9 is adopted.

TAKEN OFF THE TABLE

Senator Roberge moved to have HB 150 an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state, taken off the table.

Adopted.

HB 150 an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state.

SENATOR LAMIRANDE: Senator Roberge, the amended analysis on HB 150 states that this bill also requires, "the Commissioner of Safety to suspend a person's privilege to operate a motor vehicle if that person is in arrears for any fine or cost for the violation of any Fish and Game statute". Is what I am reading correct? Does it in fact do that?

SENATOR ROBERGE: Are you reading from the analysis?

SENATOR LAMIRANDE: Right.

SENATOR ROBERGE: Okay. In the analysis, the last three lines have been deleted by the amendment; however, Senator Wheeler and Senator Shaheen still have concerns with the bill and so we would like to change the committee report to recommit to committee.

MOTION TO RECOMMIT

Senator Roberge moved to have HB 150 an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state, recommitted to the Wildlife and Recreation committee.

Adopted.

HB 150 is recommitted.

TAKEN OFF THE TABLE

Senator Russman moved to have HB 571-FN an act establishing the Emissions Reduction Credits Trading Program and creating a Committee to Study Emissions Reduction Credits Trading, taken off the table.

Adopted.

HB 571-FN, an act establishing the Emissions Reduction Credits Trading Program and Creating a Committee to Study Emissions Reduction Credits Trading.

SENATOR RUSSMAN: Mr. President, what happened here was that this was given to the Attorney General's Office after it came through the House to review. The Attorney General's Office came up with some

changes to form, not to substance, in terms of making the bill work properly under the law. The sponsor had an opportunity to view it and the people from the House have had an opportunity to review it. It actually helps the bill to meet with what the requirements are in terms of market based emission credit trading program. Under the plan, the New Hampshire businesses will be given the opportunity to voluntarily reduce their pollution over and above what is required under the Clean Air Act. If they do that, they will then be given an opportunity to sell or buy credits as they so deem and the businesses that are coming here, frankly, are going to have to buy credits or somehow get other businesses to reduce their emissions in order to come here. It is an important part of the Clean Air Bill in terms of the emissions credit program. It will serve to enhance economic development provided that it is passed and these different industries are able to sell their credits. This part, the amendment is actually what we were supposed to pass as a committee, but it was not before us at the time so we passed the bill and execed on the bill itself which was really the amendment. So in any event, we should have execed the amendment and we execed the bill. It wasn't brought to our attention until today really and that is why we have an amendment.

Senator Russman offered a floor amendment.

2542B

Floor Amendment to HB 571-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Purpose.

I. The legislature hereby finds that an emissions reduction credits trading program must be established to meet the offset requirements of the Clean Air Act Amendments of 1990 (CAAA) and to enable certain businesses to relocate or expand in New Hampshire. The legislature further finds that due to the fact that New Hampshire is included in the Ozone Transport Region, the entire state is subject to the offset provisions of the CAAA. The legislature finds that offset provisions of the CAAA will be difficult and costly to meet for certain New Hampshire businesses. Therefore, the legislature finds that an emissions reduction credits trading program is intended to provide a financial incentive to business to voluntarily reduce air pollutant emissions and further economic development in the state by identifying and allowing utilization of available excess air pollution reductions above those required by the CAAA.

II. Under the CAAA, existing sources desiring to expand operations and new sources desiring to relocate in New Hampshire must offset emissions of nitrogen oxides (NOx) and volatile organic compounds (VOC) at ratios exceeding one to one. The emissions reduction credits trading program established in this chapter will assist these sources in meeting the offset requirements of the CAAA.

III. In future legislative sessions, it is the legislature's intention to examine and amend the emissions reduction credits trading program based on recommendations by the study committee on emissions reduction credits trading to further the purposes of this act.

2 New Chapter; Emissions Reduction Credits Trading Program. Amend RSA by inserting after chapter 125-I the following new chapter:

CHAPTER 125-J

EMISSIONS REDUCTION CREDITS TRADING PROGRAM

125-J:1 Definitions. In this chapter:

I. "Actual emissions" means the average rate, in tons per year, at which a device or source actually emitted a pollutant during any 2-year period which precedes the date of application by no more than 5 years and which represents the normal operation of the device or source.

II. "Allowable emissions" means the emission rate of a device or source calculated using the maximum rated capacity of the device or source, or, if applicable, federally required limits which restrict the emission rate, operating rate, or hours of production, so as not to exceed any of the following:

(a) Any applicable standard set forth in 40 CFR part 60 or 40 CFR part 61;

(b) Any applicable New Hampshire state implementation plan emissions limitation, including a limitation with a future compliance date; or

(c) Any emissions rate specified as a permit condition, including a limitation with a future compliance date.

III. "Baseline" means actual emissions as defined in paragraph I or allowable emissions as defined in paragraph II, which ever is lower, existing on the effective date of the Clean Air Act Amendments of 1990.

IV. "Clean Air Act" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

V. "Commissioner" means the commissioner of the department of environmental services.

VI. "Emissions reduction credits" or "ERCs" means the actual air pollutant reductions from an emitting device or source that have been certified by the department as enforceable, permanent, quantifiable, real, and achieved in excess of emission reductions required by the Clean Air Act.

VII. "Department" means the department of environmental services.

VIII. "Device" means "device which contributes to air pollution" as defined in RSA 125-C:2, VI.

IX. "Major stationary source" means, for the purpose of implementing the emissions reduction credits trading program in this chapter, a major source as defined in Section 501(2) of the Clean Air Act.

X. "Offset" means the use of an emissions reduction credit to compensate for emissions increases of a nonattainment pollutant from a new major stationary or modified major stationary device or source subject to the requirements of the Clean Air Act.

XI. "Person" means a "person" as defined in RSA 125-C:2, X who has been issued a permit to operate a device or source by the department pursuant to RSA 125-C.

XII. "Shutdown" means the permanent cessation of operations by a person who operates a device or source.

XIII. "Source" means any stationary building, structure, facility, or installation which emits or may emit any air pollutant, and which is subject to the requirements of RSA 125-C and the Clean Air Act.

125-J:2 Establishment. There is established an emissions reduction credits trading program to facilitate compliance with the offset requirements of the Clean Air Act.

125-J:3 Certification of Emission Reduction Credits.

I. The department shall establish a process by which any person holding a permit to operate a device or source may apply for and be credited with ERCs. The department shall issue ERCs to any person holding a permit to operate a device or source, upon certification that the emission

reductions are real, surplus, quantifiable, enforceable, and permanent. The department shall provide an emission baseline plan from which emission reductions are measured.

II. The operating permits required by RSA 125-C shall serve as the basis for certifying ERCs from these devices and sources.

125-J:4 Nature of Emissions Reductions Credits.

I. An emissions reductions credit certified by the department and issued to a device or source under this chapter is a limited authorization to hold and transfer such credits. Emissions reduction credits do not constitute a property right. Nothing in this chapter shall be construed as modifying the requirements of RSA 125-C, as amended, or the Clean Air Act. Emissions reduction credits, once certified and issued by the department, may be received, held, and temporarily or permanently transferred in accordance with the provisions of this chapter.

125-J:5 Use of Emissions Reduction Credits.

I. The commissioner shall make available to interested persons a list of certified emissions reduction credits. Any device and source shall also be allowed to register with the commissioner their capacity for generating credits. This shall serve as a means of exchanging information between potential generators of credits and buyers who are seeking offsets.

II. All ERCs issued by the department shall be registered with the commissioner in the name of the person holding the permit to operate for the device or source. Any person to whom ERCs have been issued may transfer credits, with or without consideration, to the state or to any device or source which requires offsets, upon 7 days' prior notice to the department.

III. Emissions reduction credits obtained by the state pursuant to this chapter shall be used, at the discretion of the governor, for meeting any requirement of the state implementation plan, attainment demonstrations under the Clean Air Act or for transfer to new or existing devices and sources in the state which require offsets under the Clean Air Act.

IV. Emissions reduction credits issued to a device or source which shuts down shall revert to the state for use consistent with this chapter.

125-J:6 Administration. The department shall administer the emissions reduction credits trading program in a manner consistent with the Clean Air Act and applicable rules and guidance issued by the U.S. Environmental Protection Agency.

3 Study Committee Established.

I. There is established a study committee on emissions reduction credits trading composed of the following members:

(a) The chairperson of the air resources council, or designee.

(b) The commissioner of the department of environmental services, or designee.

(c) The director of the division of air resources.

(d) The commissioner of the department of resources and economic development, or designee.

(e) The chairperson of the public utilities commission, or designee.

(f) Two representatives each from the house science, technology, and energy committee and the house environment and agriculture committee; and one other representative at large, appointed by the speaker.

(g) One senator from the senate environment committee and one senator from the senate economic development committee, appointed by the president.

(h) Two members of the public, appointed by the governor.

II. The committee shall study the following issues, seeking appropriate public input from interested parties:

(a) The proper means to administer the emissions reduction credits trading program, including rules, under RSA 541-A, necessary to carry out the provisions of this chapter.

(b) The proper means to oversee the administration of the emissions reduction credits trading program and to provide for an appeals mechanism.

(c) The proper use of available ERCs, whether public or private, to satisfy offset requirements.

(d) A proper and reliable means for issuing ERCs for mobile and area sources.

(e) The proper use of state-controlled ERCs that shall take into account the economic and environmental well-being of the state. This shall include the possible apportionment of ERCs for various public benefit purposes and a means for the state of evaluating the merits of a specific request for the acquisition of state-controlled ERCs.

(f) The proper use of ERCs which result from state law requiring additional emissions reductions by devices and sources beyond what is required by federal law.

(g) The use of funds generated by the potential sale of state-controlled ERCs.

(h) The advisability and conditions under which interstate offset trading should be allowed.

(i) The advisability and conditions under which a third party may be allowed to receive and transfer ERCs.

(j) The circumstances and conditions under which ERCs may be forfeited to the state.

(k) The circumstances and conditions under which available ERCs may be used to satisfy offsets that differ in the type of pollutant being regulated or type of stationary source being regulated.

(l) Any other matter related to the emissions reduction credits trading program which in the opinion of the committee requires study.

III. Appointments to the committee shall be made within 30 days of the effective date of this act. The first-named house member of the committee shall call the initial meeting within 60 days of the effective date of this act. The committee shall elect a chairperson at its initial meeting. Legislative members shall receive legislative mileage for attending to the duties of the committee.

IV. The committee shall submit a report of its findings and recommendations, including any proposed legislation, to the governor, speaker of the house, and senate president by November 1, 1993.

4 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes an emissions reduction credits trading program to facilitate offset requirements of the Clean Air Act. The department of environmental services shall establish a process by which a person holding a permit to operate a device or source which emits any air pollutant may apply for and be credited with emissions reduction credits upon certification by the department of actual air pollutant reductions in excess of emission reductions required by the Clean Air Act. Such credits may be transferred to any device or source or the state.

This bill also creates a committee to study emissions reduction credits trading.

SENATOR SHAHEEN: I would like to echo Senator Russman's comments relative to the importance of this program. In the seacoast where we had a situation with the Prime Tanning Company in Berwick Maine that would like to move either into the Dover or Rochester area, and because of the problem with being unable to get enough credits to qualify under the clean air act, they are not going to be able to move to New Hampshire. So I think that this is a critical program and we need to pass it. It is going to be very important for all of our economic development efforts.

Floor amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Fraser moved to have HB 602-FN, an act relative to claiming assets which have escheated to the state, taken off the table.

Adopted.

HB 602-FN, an act relative to claiming assets which have escheated to the state.

SENATOR FRASER: Mr. President, if you recall this was the amendment to the escheat laws of the state of New Hampshire. The original statute of limitations is seven years and if you don't make a claim within seven years, your rights to recover any funds that may have been escheated to the state have passed on. So Georgie Thomas, our state Treasurer, had requested a change in the law so that anybody who was determined to be a true owner of funds that had been escheated to the state would have some time after, subject to the Governor and Council, to recover those funds. Mr. President, what happened was that Senator Colantuono realized that there was no statute of limitations, if you will, on how long a prior owner could claim those funds and the bill was amended to limit it to 20 years following the escheat period. It also clearly identifies that it is only the prior owner who would have a claim against the state. On that basis we urge that the amendment be adopted.

Senator Fraser offered a floor amendment.

2275B

Floor Amendment to HB 602-FN

Amend RSA 471-C:31-a as inserted by section 1 of the bill by replacing it with the following:

471-C:31-a Subsequent Claims. For periods after January 1, 1985, any prior owner who comes forward to make a claim for assets which have escheated to the state, may petition the governor and council for payment of those assets; provided that such claim is made within 20 years of the date on which the assets escheated to the state. Upon providing sufficient proof of the validity of the claim and receiving the approval of governor and council, the administrator shall pay such claim to the owner in accordance with the provisions of this chapter.

Floor amendment adopted.

Ordered to third reading.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

HB 312, relative to protecting New Hampshire's heritage landmarks and establishing a review process.

HB 153, prohibiting the buying and selling of bear and requiring the Executive Director of Fish and Game to adopt rules relative to the taking of moose.

HB 376, relative to the election by nonprofit corporations and municipalities to reimburse unemployment compensation benefits or to pay contributions to the Unemployment Compensation Fund.

SB 98, relative to fees charged for processing and approval of residential mortgage loan applications.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

HB 237, requiring sporting clubs to recommend members to the Fish and Game Commission.

HB 322, requiring insurers to provide insureds with a statement reflecting the dollar amount of allowable benefit for medical procedures.

HB 369, requiring the Commissioner of the Department of Environmental Services and the Director of Public Health Services to study the issue of radon levels in the state of New Hampshire.

HB 418, relative to costs of prevailing employees under the Workers' Compensation law.

HB 478, allowing municipalities to determine the net income requirements under the optional adjusted elderly property tax exemption.

HB 655, requiring the legislature to participate in the Waste Reduction and Recycling Program.

SB 34, including traumatic brain injury and autism in the definition of "educationally disabled child."

SB 92, to rename the School for Lifelong Learning of the University System of New Hampshire, the College for Lifelong Learning of the University System of New Hampshire.

SB 152, relative to the real estate transfer tax assessment when a deed is given in lieu of a foreclosure.

SB 175, relative to a compact between New Hampshire and other states and probationers and parolees.

Senator Currier moved adoption.

Adopted.

Enrolled Bill Amendment to HB 152

2325

Amend the bill by replacing line 3 of RSA 541-B:14, IV as inserted by section 1 of the bill:

or property damage or the wrongful death resulting from bodily injury; provided,

Senator Currier moved adoption.

Adopted.

Enrolled Bill Amendment to HB 486

#2325

Amend section 1 of the bill by replacing lines 2-3 with the following: 483:15 by inserting after paragraph IX the following new paragraph:

X.(a) Piscataquog River - north branch:

Senator Currier moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 132, relative to the Revised Statutes Annotated, and creating a committee to study the rulemaking process.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 132, relative to the Revised Statutes Annotated, and creating a committee to study the rulemaking process.

Senator Currier moved concurrence.

Adopted.

SENATOR HOUGH (In the Chair): I would like to talk to you for a moment about the process for the Senate Bills that are returned from the House. It would be our intention not only to see that the sponsor of the Senate Bill and the policy committee chair of the Senate Bill, but also the Clerk would list in the calendar all of those bills by number and title. And you would understand that if they are on that list they have been amended and if it is a bill that you are either interested in but maybe not serving on the policy committee, or not a sponsor but still interested in it, you could look at the list and make your interest known. There was concern that all of us might not know what is coming back from the House on Senate Bills. That is what we are going to attempt to do. So that these are our bills that the House has done something with and so they are bringing them back to see if we agree with them. That would be the process. We are open to suggestions, but at least that gives a listing of all of the Senate Bills that have been amended by the House. That is the way that we would proceed unless otherwise improved upon or objected to starting with the next calendar. We have some here that we could move on but we are going to wait and list them for you. You can see that they are Senate Bills that have been amended by the House. If they are one of yours and you are not on the policy committee and you are interested in what is happening, you can talk to the Clerk or the Chair or Mrs. McLeod and they will see that you receive the information.

TAKEN OFF THE TABLE

Senator Currier moved to have HCR 9 an act relative to population policy and environmental preservation, taken off the table.

Adopted.

HCR 9, an act relative to population policy and environmental preservation.

SENATOR RUSSMAN: I have the opportunity or privilege or obligation to report out HCR 9 which when it was first heard was a non controversial bill at first, but then it became more controversial as the hearing went on. The committee recommendation is ought to pass. The resolution, at least my understanding of it, simply says that the world is a planet and is getting more crowded every day. Now obviously there is a cause and effect to that problem and so . . . would you believe that this was going to be reported out with the bedroom bill at one time and it ended up on the table? In any event, the idea here simply stated is to try to at some point stabilize world population because there could be no doubt, that in the event that if the world keeps continuing to multiply at the rate that it is multiplying currently, the world at some point in the future will become over populated, there is no doubt about that. I think that trying to be more of a planful society as opposed to reactionary society and waiting until there is crisis here in the United States and around the world, the idea would be for the United States to take steps at this point to be planful for the idea of somehow stabilizing population around the world and taking steps to do so. Now obviously people that testified had varying degrees of how that should be accomplished. Some of those views were extreme and no fun. Others were more realistic in terms of how to approach the problem. So in any event, the people that voted ought to pass on the committee felt that it was something that the United States should study and should take steps on a worldwide basis as a leader to at least address as far as trying to stabilize the population of this planet in a reasonable fashion. I am sure that you will hear from others in a perhaps different interpretation, but my humble opinion was as you have just heard. The committee, therefore, asks that you vote ought to pass. Thank you.

SENATOR DISNARD: Senator Russman, is this another one of those bills that it is not right for us but it is okay for them?

SENATOR RUSSMAN: No, I think that this has a universal application. I think that the message is worldwide, not just in the United States, but worldwide. Matter of fact the figures that are being quoted in the bill address the United States being, I think, it is 500 million by the year 2100. Right now apparently it says, "you see the United States population grow from the present 215 million to 400 million by 2050 at which time a lot of our kids will still be around hopefully; and 500 million by 2100". If you think in terms of the population of Boston, Washington, New York metropolitan area and other places like Los Angeles, doubling in the size that they are now, the consequences of that are immense, not just in dealing with that type of a population but in trying to feed it and water it and so on and so forth. So it urges it across the board really. I don't think that it speaks to just one country.

SENATOR WHEELER: Senator Russman, on page two of the bill on line number 11, it talks about the federal and state policy should assure that the school curriculum nationwide include information on human sexuality, contraceptives and etc, etc. Would this education include comprehensive K through 12 sex education, would it include sex education on alternative life styles?

SENATOR RUSSMAN: I don't know the answer to your question, but I think that certainly as there already is some sex education in our schools, I believe that that would certainly continue so that there would be more awareness of the problems and that type of thing, but I don't see it as an extreme type situation. I think that the purpose of this bill is to bring

attention to the problem more than come up with a solution. I think that it is to try to get the world to focus and say that eventually it is coming and we ought to be planful. How we do that, I think, will be a matter of great debate. In places other than this as far as a curriculum and those types of things.

SENATOR WHEELER: Thank you, Senator Russman. Now down on line 14 and 15 on page two, it says that, "the federal and state policy should assure universal access to the full range of family planning services", does that full range of family planning services include abortion?

SENATOR RUSSMAN: The bill is silent as to that issue. As of matter of fact I don't believe that there was any particular testimony on that particular issue in and of itself. You know, what the full range would be would again be a matter of interpretation by policymakers that deal with family planning services. If the agency involved with family planning services felt that that should be included, then I suppose that it would be. If it were not . . . just as perhaps say it would give education on adoption and things of that nature at the same time. I would hope that that would be included as well.

SENATOR WHEELER: Then if this agency should agree that abortion is part of the full range of family planning services, then would I be correct in reading line 16 that this bill would be calling for funding of abortions?

SENATOR RUSSMAN: I don't think that this bill calls for funding of abortion. I really think that is an extreme idea from this bill. My sense, and again, I can only speak for myself, is that this is to try and get people to focus on the problems that the world eventually will face if we continue to be . . . if the rate of population increase that we are presently undergoing and the consumptive nature of the people that are inhabiting the planet.

SENATOR J. KING: Senator Russman, do you know what the fastest growing population is at the present time?

SENATOR RUSSMAN: I would have to guess either ants or rabbits, but I am not sure.

SENATOR J. KING: In human beings, what is the age bracket?

SENATOR RUSSMAN: I know that the senior citizens are growing rapidly. I am not sure how that is being accomplished, but they are evidently doing it.

SENATOR J. KING: Are you aware of what happened to the Shaker Village in Canterbury?

SENATOR RUSSMAN: Yes, I am.

SENATOR LOVEJOY: Senator Russman, I know that you are in a place that you probably would rather not be. We just passed a bill dealing with dogs and cats and that took care of perhaps or we hope that it will reduce the over population. I never dreamed that we would have the same thing come back in a different method dealing with the population of human beings. I would ask you, does this in anyway deal with illegal aliens coming into our country?

SENATOR RUSSMAN: I didn't see that in there, but certainly that is an issue that I think probably could use some attention. I would be happy to work with you on that issue.

SENATOR LOVEJOY: My next question is dealing with the mention of the Amsterdam Declaration, have you ever seen this, do you know who wrote it or what it says?

SENATOR RUSSMAN: I am not overly familiar with the Amsterdam Declaration. There may be others here that know something of that. My understanding in the most simplest terms is that it deals with this subject of population stabilization and over population.

SENATOR LOVEJOY: I read of population control in some of the oriental countries where the families are allowed so many children. Now this seems to be bent in that direction, is that correct or selective, if you will?

SENATOR RUSSMAN: I would hope that that would not be the thrust per se as I see it as more of an educational process that sometimes it's like once people recognize the problem, they would address it themselves. I would certainly hope that the government . . . matter of fact, I can't imagine that. One other person that I can think of in world history said that you couldn't have children and we know what happened to him. So I would hope that that wouldn't be the case.

SENATOR LOVEJOY: Would you believe, Mr. President and Senator Russman, that we have called attention to it and we probably should bury it?

SENATOR SHAHEEN: Senator Russman, isn't it true that a policy relative to population, similar to what is being presented here, was in fact the U.S. policy through the sixties and the seventies and it was in fact a policy of the United Nations relative to world population throughout that period of time, and it has only been within the last . . . since the early 1980's since that policy has changed?

SENATOR RUSSMAN: Well I think that that is a true statement; however, I think that it would be fair to say that nobody was listening. I mean I think that is the problem. That there have been statements made to some degree before and this particularly as you can see it speaks relative to population and environmental preservation. You can only grow so many vegetables in a certain tract of land and you can only support so many people on a certain planet.

SENATOR SHAHEEN: But isn't it a fact, Senator Russman, that the world was listening and the United States was listening until the United States changed its policy relative to this issue after Ronald Reagan got elected President? When we convinced the United Nations that it needed to change its policy relative to this issue?

SENATOR RUSSMAN: That may have been a contributing factor.

SENATOR HOLLINGWORTH: Senator Russman, just a brief question. A House and Senate Resolution, what weight does that carry on any requirement for the general public to do anything?

SENATOR RUSSMAN: It doesn't as you know, carry much weight at all. It is perhaps a statement of concern. But beyond that it may fall on deaf ears.

SENATOR PIGNATELLI: This is a would you believe. Would you believe that having observed governments for the last forty some years, it occurs to me that we are always on the back end of solving our problems? And would you believe that I think that this is an opportunity for us as a country, and as a state, to begin with, to start discussing and educating ourselves regarding an issue that is going to be of increasing importance as the world gets larger in population and smaller in production capacity?

SENATOR RUSSMAN: I think that I would agree with that in terms that we Americans have been reactionary to problems. Once the well is polluted we wonder what to do about it. I think that we are slowly shift-

ing our focus to being more planful in our society. I certainly think that this is one area that we need to be more planful on.

SENATOR MCLANE: As a mother of five and a grandmother of 12, I am not one to talk because I have contributed to the problem. Some say that it doesn't mean anything, this resolution and, "oh, Susan, don't worry about it", but I think that it does mean something if we kill this resolution. And for that reason, I believe that it is important. A man named Werner Fornos who is a head of the Population Institute in the United States, sat on that chair right there ten years ago and was introduced on the floor of this Senate and I have never forgotten him. There was an ad in the New York Times the other day with a picture of him and he says, "there are more than five billion in the world today and each year we add nearly 100 million more. It is like adding another population the size of Mexico to the planet every year. Even if in 20 or 30 years these countries were to double their food production, health facilities, job opportunities, classrooms and all basic services, their quality of life would be no better than it is today. Why, because their population is on a course to double on the same amount of time". I think that if we don't recognize that truth, this is a bill that has been written about in Senator Gore's book, "Earth in the Balance", Dennis Meadows who was the moderator of our Senate Economic Summit has spoken and written extensively. It calls for money for the United Nation Committee on Population and it calls for study. It doesn't in truth tell us to do anything. But it says that the Senate is aware of the problem. For that reason, I think that it is vitally important. I did want to mention Annette Cotrell who is a constituent of David Currier's. She is a very unusual woman and she has worked for over 40 years in this field. She has done some fine work in this state of working with marriage licenses, with fees, with information to go to newly married couples, and she has worked for over four years writing this resolution. She has called us both often, and feels vitally on the subject. So for that reason, I urge passage.

SENATOR WHEELER: Senator McLane, I draw your attention to page two, line four where it says, "the United States shall adopt a national population policy aimed at stabilizing the United States population at sustainable levels". Would you believe that there is a group out there called, the Negative Population Growth, Inc, that has a plan for sustainable levels and that their plan actually reduces the number of people that are in the country today and that this bill may do that also?

SENATOR MCLANE: I think that what the bill does is it uses the word, 'should' adopt a policy. If they are dealing with Senator King and Senator Fraser and myself, I think that they are fighting a losing battle. This is America and we are not going to have a Chinese policy. But what the resolution does is call for recognition of the problem and study of methods to deal with the problem.

SENATOR LAMIRANDE: I respect the comments that my colleague Senator McLane made and she knows that I respect her highly and I also respect Senator Russman and the comments that he made earlier. I rise in opposition to HCR 9 and I will let you know why. Although the title of the resolution sounds good, this is one bill where you really need to read the fine print. This resolution contains extremist, radical language. It calls for increased federal spending and federal mandates to our school district and asks us to endorse a far-reaching population control policy. HCR 9 contains some dramatic and sweeping but undocumented and unsubstaniated assertions; for example, it begins with the claim that

over population poses the greatest threat to life on earth. Not only does it seem incredible that life is the greatest threat to life, but who says that is? Where is the proof? What about the claim that the global quality of life will vary inadvertently with the quantity of people? If that is true, then our quality of life should be perpetually decreasing which it obviously is not. HCR 9 calls for the support and funding for some very radical measures of population control and social planning to counteract a crisis that has not been substantiated; for example, on page two, line seven through nine, "federal and state health insurance programs should cover comprehensive family planning services including voluntarily sterilization for all". I don't know about you but I would rather see our health care dollars go towards vaccinations for children and illness prevention than passing a resolution saying state health care policies must include sterilization. Again on page two, line ten through thirteen, "federal and state policy should assure that school curriculum nationwide includes information on human sexuality, contraception, family size, parenthood, nonparenthood, population dynamics and their implications for a sustainable future", is that what we really need? The federal government bureaucrats telling New Hampshire school districts what their curricula should include? Washington recommending to our schools what family sizes should be? A bit further down, lines fourteen through sixteen, calls for universal access to the full range of family planning services regardless of age". I think that there are some measures that I would not want a six year old exposed to and I don't think that it is the Senate's business to dictate to parents or schools, that they should have the full range of family planning services available. Next paragraph, "the federal government should increase funding for contraceptive research". I happen to think that the private sector is doing an excellent job here and President Clinton's budget does not call for any increase in funds for contraceptive research. And finally, the last paragraph calls for, "four percent of U.S. foreign aid be spent on family planning". That would mean an increase of almost $1 billion in foreign aid. I think that is irresponsible at a time when we are trying to cut the federal deficit. I for one, do not want to be on record calling for a massive increase on foreign aid. We need to make sure that the millions of dollars that we spend each year in family planning funds in developing countries is put to better use. I urge my colleagues to look at this resolution carefully and decide whether the Senate should be in the business of telling the world what to do to reduce population.

SENATOR MCLANE: I am confused. Are you saying that it isn't true that the population of the United States will double by the year of 2100 or are you saying, I mean that is your first premise and are you saying that? That that fact is not true or are you saying that if it is true we should not be doing anything about it, should not study the issue as the resolution calls for?

SENATOR LAMIRANDE: Well, Senator McLane, you seem to have two questions there, so I will try to answer them both. I am not saying that the population of the world will not increase by the year 2100, double. What I am saying is that this resolution does not address the problem in the proper prospective; example, the United States population has increased by 6.1 percent. Senior citizens have increased by six percent. Senior citizens outnumber teenagers right now by seven to one. Is that to say that we are to eliminate six senior citizens because they outnumber

teenagers seven to one? The policy, the resolution does not address the problem. The problem does not control population in births. It is not addressing the issue.

SENATOR MCLANE: Senator Lamirande, I think that we have come to the essence of your objection. You do not disagree that we have a problem. You are very clear as to the causes, people are living longer and there is more inner migration and that may be the problem more than the fact that people are having nine babies, eleven babies, fifteen grandchildren. That is what you are saying. So if you are saying that the problem is the population, how could you be opposed to a bill that would study various solutions and point out to the world the problem, recognize the problem? I don't see where your opposition lies except that I noticed that you used the word 'mandatory' and this is a resolution. This is a resolution which says that we recognize that there is a problem and we feel that we should study it.

SENATOR LAMIRANDE: To answer your question, I don't believe that this is the way to go about studying a problem; if in fact, we do have a problem, and I am not saying that we do have a problem, I think that the United States, for one, has a good handle on population control.

SENATOR MCLANE: I believe that Senator Russman made a very important analogy in the beginning about the problems of pollution in the United States. What he said was, "we did not recognize the problem" and then we have had to spend all of this money cleaning up the problem. I think that this is all that the resolution asks, is to say that the world has a problem we should not stick our heads in the sand, but we should help the world help the population. And that is what I think is important and that is why that I believe that this is such an important resolution.

SENATOR LAMIRANDE: Again, Senator McLane, I respect your views and how you feel about the resolution. But obviously, I do not feel the same. And when someone testifies in support of the bill, and I can quote right here, "that the concern that this individual had was that mankind was becoming a cancer upon the earth" and that this was a way to solve that problem. To me that is not the way to go about it.

SENATOR MCLANE: That testimony came from a Mr. Root who made it very clear that he was offering ideas that were not part of the resolution. I think that it is unfair to quote him and say that this was the resolution. The resolution is written by the Audubon Society and others. It doesn't include that, would you believe?

SUBSTITUTE MOTION

Senator Colantuono moved to substitute indefinitely postponed for ought to pass.

Adopted.

Senator Shaheen requested a division vote.

Senator Shaheen withdrew her request for a division vote.

HCR 9 is indefinitely postponed.

ANNOUNCEMENTS

SENATOR BOURQUE (Rule #44): Today I am saying goodbye to my intern, it is his last day today. He won't be here to enjoy the party that we are having for the rest of the interns. So in appreciation, I wanted to say thank you for all of the good work that he has done and his name is Dan

Palermino and he has been a gem. He is leaving early because he has a job. He is going to be going to Oregon next week to learn his new job. He is going to be with an insurance company. I am very proud to have had him work with me as an intern. He has been wonderful. He has done an excellent job. Best of luck to him. Thank you, Mr. President.

SENATOR HOUGH (In the Chair): Thank you, and we do appreciate your help. You might want the benefit of my counsel before you go to Oregon to work for an insurance company.

SENATOR BALDIZAR (Rule #44): I just wanted to take a few minutes and discuss the subject of roll call votes. There has been some discussion in my neck of the woods about roll call votes. While we were discussing the Memorial Day, I didn't jump in fast enough to call one. I think perhaps that was a substantial issue that maybe could have had a roll call. I just want the residents of Senate District 12 to know that I supported the bill as ought to pass. Thank you.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Tuesday, May 11, 1993 at 1:00 p.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 61, an act relative to substitution of alternate jurors after final submission of a case to the jury.

HB 102, an act changing the penalty for DWI and boating while intoxicated while transporting a person under the age of 16.

HB 109-FN, an act increasing certain fees and making technical corrections in the Tobacco Tax and Timber Tax.

HB 125-FN, an act relative to federal funding for rebuilding, modernizing, and maintaining rail properties.

HB 128-FN, an act relative to the penalty for falsifying applications and to the fee for picture identification cards.

HB 163-FN, an act establishing a leaking underground storage tank cost recovery fund.

HB 166, an act relative to felons who own or possess dangerous weapons.

HB 215-FN, an act relative to extradition.

HB 216, an act allowing owners of homes destroyed by natural disaster to place temporary manufactured housing on the lot while the home is being rebuilt.

HB 220, an act relative to the committee studying the real estate valuation and revaluation process.

HB 238, an act authorizing a member of a cooperative school district to serve on a town budget committee.

HB 254-FN, an act relative to the authority of the state Treasurer to void state checks and relative to increasing the fee for checks returned to the state.

HB 268, an act increasing the penalty for certain subsequent offenses of indecent exposure.

HB 290, an act establishing priority of real estate tax liens.

HB 335, an act relative to listing the names of candidates on ballots used in voting machines.

HB 349, an act requiring that selectmen or assessing officials be allowed access to property as a prerequisite to appeal of any matter pertaining to a property tax.

HB 352, an act requiring DWI offenders to supply a certified copy of their New Hampshire driver's license record at the time of enrollment into an impaired driver intervention program.

HB 353, an act relative to the Police Commission in the town of Conway.

HB 363, an act exempting certain nonresidents who are peace officers or hold valid licenses to carry loaded pistols and revolvers from obtaining such license in this state.

HB 434-FN, an act relative to the assessment of the oil import license fee.

HB 462-FN, an act relative to the Victims' Assistance Fund.

HB 464-FN-A, an act recognizing Merchant Marines who served in World War II as World War II veterans.

HB 469-A, an act allowing the state Treasurer to issue bonds to pay for debt issuance costs.

HB 500, an act relative to the obligations of lessees of publicly owned property for the payment of property taxes.

HB 503, an act relative to past legislative enactments authorizing water use in New Hampshire and giving official notice to all water users that the Division of Water Resources will prepare a list of all water users.

HB 522, an act relative to the observance of Memorial Day.

HB 537, an act relative to registration of sexual offenders.

HB 565, an act prohibiting hazing.

HB 571-FN, an act establishing the emissions reduction credits trading program and creating a committee to study emissions reduction credits trading.

HB 595-FN, an act allowing HIV testing for AIDS of a perpetrator of certain crimes at the request of the victim.

HB 600-FN-LOCAL, an act relative to candidates who seek nomination by nomination papers.

HB 601-FN-A, an act exempting from the Real Estate Transfer Tax certain transfers between land trusts and housing cooperatives.

HB 602-FN, an act relative to claiming assets which have escheated to the state.

HB 607-FN, an act relative to the plea-by-mail program.

HB 645-FN, an act repealing a provision requiring approval by the Superior Court of rules adopted by the Board of Tax and Land Appeals, increasing a filing fee charged by the board; and relative to the effect of an abatement appeal on subsequent taxes.

HB 671-FN, an act increasing the term of a resident's license to carry loaded pistols and revolvers.

HB 682, an act reducing the number of peremptory challenges to jurors available to both prosecutors and defense in a trial for murder in the first degree.

HB 693, an act legalizing the actions of the Kingston town meeting.

Senator Disnard moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Tuesday, May 11, 1993 at 1:00 p.m.

Adopted.

Adjournment.

May 11, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

I spend a lot of time riding around in hearses. Luckily, so far, all of the rides I have taken have been round trip. One of the first things I noticed is that on a hearse, the New Hampshire license plate does not include those four defining words: "Live Free or Die". The only other vehicles where I know that to be the case are the ones you drive. Those special license plates that elected officials have, don't say "Live Free or Die" either. Hearses and politicians' cars! Just a coincidence - probably. Remember, as you work on the budget, please don't drive us to any graveyards unless you are planning to bring us back. Round trips in a hearse aren't that bad. It's the one-way variety we worry about. Lord, You make dead things alive. Help us to be cautious lest we make alive things dead. Invade this Senate today and shake up each member. Give them your wisdom to bravely discern between those dead items which belong in the legislative cemetery and those life-giving decisions which we need them to make, so that all may live what it says on most of our license plates. Amen

Senator MacDonald led the Pledge of Allegiance.

Recess.

Senator Delahunty in the Chair.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 17-FN-A, establishing a committee to study methods of preventing and resolving disputes relative to educationally disabled students.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 17-FN-A, establishing a committee to study methods of preventing and resolving disputes relative to educationally disabled students. Senator Disnard moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 49, establishing a committee to study the feasibility of establishing a commercial shellfish and oyster aquaculture program.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 49, establishing a committee to study the feasibility of establishing a commercial shellfish and oyster aquaculture program.
Senator Russman moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 50, extending the report date and adding additional members to the Law Enforcement and Prosecutor Task Force.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 50, extending the report date and adding additional members to the Law Enforcement and Prosecutor Task Force.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 60, relative to solicitation of prostitutes.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 60, relative to solicitation of prostitutes.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 62, establishing a committee to study child support issues.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 62, establishing a committee to study child support issues.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 72, relative to central business service districts.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 72, relative to central business service districts.

Senator Currier moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 100, protecting animal facilities and organizations or projects involving animals.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 100, protecting animal facilities and organizations or projects involving animals.

Senator Cohen moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 106, relative to a Northeast Interstate Dairy Compact.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 106, relative to a Northeast Interstate Dairy Compact.

Senator Cohen moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 117, relative to the appointment of and payment of fees to guardians ad litem.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 117, relative to the appointment of and payment of fees to guardians ad litem.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 173, creating a Correctional Industries Advisory Board.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 173, creating a Correctional Industries Advisory Board.

Senator J. King moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 248-FN-A, establishing a committee to study the feasibility of locating a convention center, conference complex, sports stadium or combination center in southern New Hampshire.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 248-FN-A, establishing a committee to study the feasibility of locating a convention center, conference complex, sports stadium or combination center in southern New Hampshire.

Senator W. King moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 5, repealing article 6 of the uniform commercial code on bulk sales and making conforming amendments.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 69-FN, relative to pricing and use of promotion funds by the Liquor Commission.

SB 192-FN, relative to supplemental allowances for retirement system members.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 48, relative to the Children's Trust Fund.

SB 78, requiring that student records of transferring students be provided upon request.

SB 105, relative to the rulemaking authority of commissioners of state departments.

SB 134, establishing a committee to study the need for reasonable standards and procedures for contracting services by the state.

SB 185-FN, allowing the Director of the Division of Human Services to reorganize the rules of the Medical Assistance Program.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 340, relative to technical changes in the Small Employer Insurance Law.

HB 560, changing procedures regarding appointment of guardians of minors.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 125-FN, relative to federal funding for rebuilding, modernizing, and maintaining rail properties.

HB 166, relative to felons who own or possess dangerous weapons.

HB 335, relative to listing the names of candidates on ballots used in voting machines.

HB 537, relative to registration of sexual offenders.

HB 595-FN, allowing HIV testing for AIDS of a perpetrator of certain crimes at the request of the victim.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 110, relative to use and derivative use immunity.

HB 313, relative to mortgage insurance.

HB 348, standardizing forms used by insurance companies for medical benefits claims.

HB 521, relative to maternity benefits.

HB 585-FN, requiring state agencies to purchase recycled materials.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 47, relative to prosecuting petitions under the uniform reciprocal enforcement of support act.

SB 70, requiring that dogs and cats placed by shelters and pounds be spayed or neutered.

SB 74, changing the name of Civil Rights Day to Martin Luther King, Jr. Civil Rights Day.

SB 227-FN, establishing a revenue-neutral initial public offering exemption for national securities markets and clarifying which securities markets do not qualify for an exemption.

SB 229-FN-LOCAL, relative to the requirements for sprinkler systems.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 77, relative to resellers of telecommunication services.

COMMITTEE REPORTS

HB 328, an act requiring the refund of mortgage loan application fees and costs when a loan application is not processed due to the financial failure of the mortgage lender. Banks committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

2320B

Amendment to HB 328

Amend the title of the bill by replacing it with the following:

AN ACT

relative to the priority for distribution in insolvency proceedings of fees and costs paid in advance by consumers in relation to a mortgage application.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Advance Fees and Costs Paid by Consumer Given Priority. Amend RSA 395:30 by inserting after paragraph IV the following new paragraph:

IV-a. Reimbursement of fees or costs paid in advance by a consumer in relation to a mortgage loan application when the mortgage loan was not processed due solely to the insolvency of the institution, but only to the extent such fees or costs were not paid over to a third party for services actually rendered prior to the insolvency.

2 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes the priority for distribution in insolvency proceedings of fees and costs paid in advance by consumers in relation to a mortgage application.

SENATOR LAMIRANDE: Mr. President and members of the Senate, HB 328 would require that mortgage loan application fees and costs be returned to the applicant in the event of a bank failure. The committee heard testimony that while this makes sense, it is not possible due to the FDIC regulations and procedures. When a bank fails and comes under the control of the FDIC, the bank has no ability to refund to loan applicants the fees paid in advance. The committee amended the bill to prioritize the consumer in the event that the failure to process the loan application was due to insolvency. Even though the FDIC is in control of the bank and its assets, they do abide by state laws and regulations. The amendment would place these consumers fourth in prioritized, claims after the cost of liquidation and wages and salaries of employees, the payment of debtors and claims and the payment of already prioritized liens, but before general claims, debts and obligations of the bank. The committee voted that it ought to pass as amended.

Amendment adopted.

Ordered to third reading.

HB 591-FN-LOCAL, an act authorizing counties and municipalities to allow payment of local taxes, fees and other charges by credit card. Banks committee. Rerefer to committee. Senator Barnes for the committee.

SENATOR BARNES: HB 591 would allow counties and municipalities to accept payment of local taxes, fees, and other charges by credit cards. The committee, in doing some research on this bill, discovered that while Virginia is doing this now, they have run into a problem with the charges by the major credit card issuers. The credit card issuers charge retailers a fee for accepting credit cards for payment. This bill would allow the municipality or county to charge that fee to the credit card user; however, the credit card issuers under their bylaws, prohibit the consumer from being charged that additional fee. Currently, Virginia and the federal government are looking at ways of resolving this conflict. The committee feels that until this conflict is resolved that this bill should not take effect; therefore, the committee recommends that it be rereferred to the committee until next session by which time we hope that this issue has been taken care of.

Committee report of rerefer is adopted.

HB 233, an act relative to the equipment challenge grant program. Education committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: The equipment challenge grant program was created by chapter 259, HB 497 last year. This bill in front of us would add an 18th member to the steering committee which would be appointed by the Governor and represent the general public. It would also add immunity from civil liability to persons or corporations who donate to a public elementary or secondary school to assist in projects. This is already being done in chapter law for the technical colleges. This will just be applicable to the high schools and the elementary schools, but mostly high schools.

Adopted.

Ordered to third reading.

Recess.

Out of recess

SENATOR DELAHUNTY (In the Chair): Senator Currier has with him today a special guest who is Lord John Henniker who is a direct descendent of the individual who the town of Henniker was named for, from Sussex, England, I would like to welcome to the Senate, him and his guest.

LORD JOHN HENNIKER: I think that it's been eight generations since Henniker was named after my forbearer and so it has taken a long time for us to get together. But our great hope is that we now feel friends with everybody in Henniker and we feel friends with everybody in New England College where we have been staying as guests. It has been the most marvelous week of my life, I think. And this restores my faith in humanity and in the world after all the problems that we have in the recent years. It has been absolutely lovely. Thank you very much indeed, Senators of New Hampshire, for having me here for your guest. I am also a member of the Senate, House of Lords in London. Thank you again for your greetings and I will take your greetings back and I give you the greetings from London to Concord. It has been lovely to see you all and to be here in this really tropical weather. Thank you very much.

SENATOR DELAHUNTY (In the Chair): I am not sure which is more appropriate, Lord John or Senator Henniker. But Senator, thank you very much for coming and bringing your guest.

HB 278, an act relative to joint building committees for the construction of schoolhouses. Education committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: Mr. President and members of the Senate, this bill codifies the organization duties and disillusion of the joint building committees for the cities with dependent school districts which require council aldermanic budget approval. Current law states that committees must be composed of equal numbers from the city council and the school board, but does not outline a process for those activities. The bill exempts Concord, Keene, Lebanon and Claremont because they are already independent school districts which require voter approval from the general public at a district meeting.

Adopted.

Ordered to third reading.

HB 288, an act relative to teacher representation on the New Hampshire Retirement System Board of Trustees. Education committee. Rerefer to committee. Senator J. King for the committee.

SENATOR J. KING: This has to do with teacher representation on the Retirement Board System. The AFTE and the NEA and the possibility of some others were discussing who should be the representative there and the committee did not agree with any of them; therefore, it has been rereferred with the hopes that this group would get together and find the most amicable and lovable way of settling this.

Committee report of rerefer is adopted.

HB 558, an act requiring the Board of Education to submit its proposed rules relative to standards and statewide testing and assessment to the standing legislative education committees for approval or objections. Education committee. Ought to Pass. Senator Disnard for the committee.

Senator Disnard moved to have HB 558, an act requiring the Board of Education to submit its proposed rules relative to standards and statewide testing and assessment to the standing legislative education committees for approval or objections, laid on the table.

Adopted.

LAID ON THE TABLE

HB 558, an act requiring the Board of Education to submit its proposed rules relative to standards and statewide testing and assessment to the standing legislative education committees for approval or objections.

HB 665-FN-A, an act establishing a committee to study the effects and feasibility of a statewide property tax to fund education. Education committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: Mr. President, this bill establishes a diverse committee to study the effects and feasibility of a statewide property tax to fund education. The bill specifically outlines the issues requiring study.

SENATOR COLANTUONO: Senator Disnard, could you explain a little bit how, in terms of the testimony you heard in the committee, how a statewide property tax might work?

SENATOR DISNARD: I would like to refer you to page two of the bill. The study committee has specific duties which they must review; so therefore, I do not want to be in the position of indicating if we have a study committee what they must and what they will report. But you will notice that they will explore the effect on cities' and towns' tax rates in a statewide tax, to equalize the set evaluation for each city and town. I can go on and on . . . . But those are their specific duties to review and to come back with a specific recommendation.

Senator Blaisdell moved to have HB 665-FN-A, an act establishing a committee to study the effects and feasibility of a statewide property tax to fund education, laid on the table.

Adopted.

LAID ON THE TABLE

HB 665-FN-A, an act establishing a committee to study the effects and feasibility of a statewide property tax to fund education.

HB 689-FN-LOCAL, an act relative to funds for students residing in unorganized places. Education committee. Ought to Pass with Amendment. Senator Lamirande for the committee.

2422B

Amendment to HB 689-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

relative to funds for students residing in organized towns and unorganized places.

Amend the bill by replacing all after the enacting clause with the following:

1 Use of Federal Funds by Organized Towns; Road Funding Deleted. Amend RSA 219:24 to read as follows:

219:24 Use ***of Funds by Organized Towns.*** The several sums so apportioned to each organized town[, unincorporated town, and unorganized place] shall be paid over by the state treasurer, within 60 days after receipt thereof, to the treasurer of [such town in the case of an organized town and to the treasurer of the county in the case of an unincorporated town and an unorganized place] ***the school district in the town*** and shall be expended for the benefit of the public schools [and public roads] in the organized [towns and for the benefit of education of students and public roads in the case of unincorporated towns and unorganized places] ***town,*** in addition to the sums required by law to be raised for such purposes, in such manner as may be determined by appropriations duly made by [town meeting in the case of organized towns and by the county convention in the case of unincorporated towns and unorganized places] ***school district meetings***.

2 New Section; Use of Federal Funds by Unorganized Places. Amend RSA 219 by inserting after section 24 the following new section:

219:24-a Use of Funds by Unorganized Places. All sums so apportioned to unorganized places shall be expended for the benefit of public schools in the counties in which such places are located, in such manner as the appropriate county legislative delegation shall prescribe giving due consideration to the expenditure of a portion of such sum as part payment towards the costs of the education of any children residing in such unor-

ganized places. Such payment shall be made by the state treasurer, within 60 days after receipt thereof, directly to financially and politically independent school districts. If there are no students residing within the unorganized places in a county, the funds will be disbursed to the school districts within the same county as the unorganized places in a manner as appropriate county legislative delegation shall prescribe.

3 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill provides that federal funds received on account of national forests shall be used by organized towns and unorganized places exclusively for education, and no longer for public roads.

SENATOR LAMIRANDE: HB 689-FN ,as amended, changes the status relative to the expenditure of federal funds received by organized towns and unorganized places to compensate the national lands within their boundaries. Originally this bill was intended to correct prior legislative action, legislation making county government rather than the state responsible for unorganized places costs Coos county more than $85,000 in federal funds. Grafton and Carroll counties also lost thousands of federal dollars. HB 689-FN corrects this problem. And as amended, allows the organized towns and the unorganzied places to maximize federal funds. Towns and places with national land receive federal compensation in two ways, revenue from timber sales and ski area leases and payment in lieu of taxes based upon amount of acreage. If money from both sources is appropriated to the same entity, money from the first source is deducted from the second resulting in a loss of federal funds. This bill directs revenue from timber sales and ski area leases to the school districts so that New Hampshire's organized towns and unorganized places can collect the full amount of federal dollars from both sources. For example, the town of Albany is estimated to receive an additional $30 thousand, Bartlett $20 thousand, Jackson $22 thousand and Sandwich $13 thousand. This bill provides significant amounts of additional revenue to Coos, Grafton and Carroll counties and does not have any impact on state government other than the state treasurer will need to issue a few additional checks each year. The Senate Education Committee thoroughly studied this issue and voted unanimously in favor of HB 689 as amended.

Amendment adopted.

Ordered to third reading.

HB 108-LOCAL, an act permitting counties to establish special equipment accounts for registers of deeds. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Lovejoy for the committee.

2161B

Amendment to HB 108-LOCAL

Amend RSA 478:17-j, II(a) as inserted by section 1 of the bill by replacing it with the following:

(a) There is hereby established in the county treasury a register of deeds equipment account. If the county commissioners and the county convention vote to adopt the provisions of this section, the register of deeds shall impose a surcharge not to exceed $2, the exact amount of which shall be set by the register, for recording each document for which the register of deeds imposes a fee under RSA 478:17-g. The surcharge shall be on a per document, and not on a per page basis. After the sur-

charge is adopted, it shall take effect on the first day of January following the annual budget acceptance by the county convention. Each register of deeds shall provide reasonable public notice that a surcharge shall be imposed along with the exact amount of the surcharge, at least 60 days prior to the date on which the surcharge takes effect.

AMENDED ANALYSIS

This bill authorizes each county to establish in the county treasury a separate register of deeds equipment account. Establishing the account requires a majority vote of both the county commissioners and the county convention. The account is funded by a surcharge not to exceed $2 on each document which the register of deeds records. After the surcharge is adopted, it takes effect on the first day of January following the annual budget acceptance by the county convention. Each register of deeds shall provide advance public notice of the surcharge.

Moneys in the account may be appropriated only for the purchase, rental, or repair of equipment of the office of the register of deeds, and any such appropriation requires the prior approval of both the county commissioners and the county convention.

SENATOR LOVEJOY: This bill authorizes each county to establish in the county treasury a separate registry of deeds equipment account. Establishing the account would require a majority vote of both the county commissioners and the county convention. The account is funded by a surcharge not to exceed $2 on each document which the register of deeds records. After the surcharge is adopted it takes effect on the first day of the month following the annual budget acceptance by the county convention. Now monies in the account may be appropriated only for the purchase and rentals or repair of equipment. The committee voted ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 113, an act expanding the financial authority of towns. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Bourque for the committee.

2582B

Amendment to HB 113

Amend the bill by replacing section 5 with the following:

5 New Paragraphs; Tax Anticipation Notes; Budgetary Town Meetings. Amend RSA 33:8-d by inserting after paragraph II the following new paragraphs:

III. The issuance of tax anticipation notes shall be authorized by a majority vote of the town council.

IV. This section shall not apply to towns which have adopted a charter calling for a budgetary town meeting pursuant to RSA 49-D:3, III. The issuance of bonds or notes in such towns shall be governed by RSA 33:7, 33:8 and 33:8-a.

Amend the bill by inserting after section 16 the following and renumbering the original sections 17 and 18 to read as 18 and 19, respectively:

17 Town of Bedford Bond Authorization Procedures. The provisions of RSA 33:8 and 33:8-a shall continue to apply to the authorization of bonds and notes by the town of Bedford, notwithstanding any provisions to the contrary in the town's home rule charter or in RSA 33:8-d. All actions taken by the town since August 23, 1991, in reliance upon the provisions of RSA 33:8 and 33:8-a are hereby confirmed and ratified.

AMENDED ANALYSIS

This bill extends to towns certain authority currently given only to school districts, such as the authority to accept grants, to obtain tax participation notes, and to allow the library trustees to accept grants.

The bill also delineates the bond authorization procedures which are applicable to the town of Bedford and confirms and ratifies actions taken by the town in reliance on certain statutes, since August 23, 1991.

Recess.

Out of recess.

Senator Roberge moved to have HB 113 an act expanding the financial authority of towns, laid on the table.

Adopted.

LAID ON THE TABLE

HB 113, an act expanding the financial authority of towns.

HB 136 FN-LOCAL, an act pertaining to the authority and operation of the Public Utilities Commission. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2691B

Amendment to HB 136-FN-LOCAL

Amend the bill by replacing section 1 with the following:

1 New Section; Appearance. Amend RSA 365 by inserting after section 10 the following new section:

365:10-a Appearance. Notwithstanding any other provision of law to the contrary, the commission may in its discretion allow a non-lawyer to appear before the commission on behalf of any party, provided however that the discretion shall not be exercised unreasonably or in a discriminatory manner. All parties will be required to adhere to the commission's rules of practice and procedure in addition to any orders of the commission or agreements between the parties, including but not limited to those concerning confidentiality.

Amend the bill by replacing all after section 4 with the following:

5 New Section; Nuclear Decommissioning Finance Committee; Rulemaking. Amend RSA 162-F by inserting after section 15 the following new section:

162-F:15-a Rulemaking. The committee shall adopt rules under RSA 541-A relative to the conduct of hearings under RSA 162-F:21 and such other matters necessary to provide assurance of adequate funding for decommissioning as provided under this chapter.

6 Effective Date.

I. Section 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill:

(1) Allows the public utilities commission to allow a non-lawyer to appear on behalf of any party.

(2) Allows the public utilities commission to assess the costs of investigations, including the costs of experts, accountants and other assistants against the petitioning utility or party.

(3) Allows the commission to adopt rules regarding the recovery of rate case expenses, conduct of public hearings, and certain matters regarding decommissioning funding.

SENATOR COLANTUONO: Mr. President, at the request of Senator Hollingworth, I move to recommit this bill to committee for further work.

MOTION TO RECOMMIT

Senator Colantuono moved to have HB 136-FN-LOCAL an act pertaining to the authority and operation of the Public Utilities Commission, recommitted to committee.

Adopted.

HB 136-FN-L, is recommitted.

HB 171-FN, an act changing procedures applicable to the Board of Registration in Medicine, and clarifying the provisions providing immunity from civil action to members of the Board of Chiropractic Examiners, Board of Registration in Medicine, and Board of Examiners of Psychology and Mental Health Practice, and good faith immunity to others who provide information to these boards. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2317B

Amendment to HB 171-FN

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-17 to read as 4-18, respectively.

3 Reference to FLEX Examination Replaced. Amend RSA 329:10-a, I(a) to read as follows:

(a) [An] ***A national*** examination approved by the federation of state medical boards [(FLEX)]; or

Amend RSA 329:14 as inserted by section 4 of the bill by inserting after paragraph IV the following new paragraph:

V.(a) The board shall issue special training licenses to persons of good professional character who are enrolled in a regular residency or graduate fellowship training program accredited by the Council on Graduate Medical Education, and who possess such further education and training as the board may require by rule. Training licenses shall be recorded in a ledger separate from that used to record physician's licenses.

(b) Persons holding training licenses shall be subject to the disciplinary provisions of RSA 329:17 and such additional professional character and competency requirements as the board may require by rule.

(c) Training licenses shall be confined to activities performed in the course of the qualifying residency or graduate fellowship training program, shall expire automatically upon the licensee's separation from the residency or graduate fellowship training program for any reason, and may be issued on a restricted or conditional basis.

Amend the bill by replacing section 17 with the following:

17 Repeal. The following are repealed:

I. RSA 329:21, I, relative to exemption from chapter for medical residents and interns.

II. RSA 329:2, II(d), relative to compensating the board's counsel, assistants and investigators appointed in disciplinary proceedings.

AMENDED ANALYSIS

This bill establishes and redefines certain board of medicine procedures relating to applications, investigations, and disciplinary actions by:

1. Extending the board's authority to assess administrative fines to include persons involved in the unauthorized practice of medicine.

2. Replacing specific reference to "FLEX" examination with "national" examination.

3. Specifying procedures for application for permanent, temporary and restricted licenses.

4. Specifying procedures for license applicants from other states or countries to obtain a 6-month conditional license.

5. Specifying dollar limits for administrative fines.

6. Broadening the statute of limitations relating to the board's power to bring a disciplinary action. Reference to the extended statute of limitations for minors initiating actions has been deleted.

7. Authorizing the board to issue training licenses to license medical residents, graduate fellowship trainees, and interns.

8. Authorizing the board to investigate situations involving the unauthorized practice of medicine and misconduct by applicants, in addition to misconduct by licensees. Those who may be retained by the board to assist with any investigation or adjudicatory hearing include expert witnesses or other qualified persons. With limitations, the board may request the governor and council for funds to cover such expenses.

9. Expanding the board's investigatory authority to include license applicants and persons involved in the unauthorized practice of medicine.

10. Following an investigation, giving the board the discretion to decline or defer prosecution of a complaint, and to reexamine allegations at any time within the statute of limitations.

This bill was requested by the board of registration in medicine.

SENATOR COLANTUONO: This is a lengthy bill but it is one of those types that fits into the catagory of housekeeping measures. It was brought forward by the Attorney General's Office to clean up some of the language in the various boards and to make them all consistent. The amendment was brought forward at the request of the Dartmouth Medical Center to allow there to be a special training license for doctors who are working as residents in the training program up there. It extends the good faith immunity to persons working on the Chiropractic Board and the Board of Psychology and Mental Health Practice. It is requested by the Board of Registration of Medicine also.

Amendment adopted.

Ordered to third reading.

HB 177-FN-LOCAL, an act establishing procedures for the removal of town clerks, tax collectors, and treasurers. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator J. King for the committee.

2687B

Amendment to HB 177-FN-LOCAL

Amend the introductory paragraph of RSA 41:16-c as inserted by section 2 of the bill by replacing it with the following:

41:16-c Removal of Town Clerk. The governing body may institute proceedings to remove a town clerk from office whenever, upon examination by the department of revenue administration, a certified public accountant, or a public accountant licensed by the state under RSA 301, the accounts are found to contain an irregularity or material error, or show evidence that the timely deposit of funds has not been made in accordance with RSA 261:165. For the purposes of this section, "irregularity"

means in intentional misstatement of the financial statements or a theft of assets, and "material error" means a mistake or omission resulting from gross negligence which results in a material misstatement of the financial statements. The governing body may institute proceedings to remove the town clerk as follows:

Amend RSA 41:16-c, VI as inserted by section 2 of the bill by replacing it with the following:

VI. The governing body's determination under paragraph V may be appealed de novo to the superior court in the county in which the municipality is located.

Amend the introductory paragraph of RSA 41:26-d as inserted by section 3 of the bill by replacing it with the following:

41:26-d Removal of Treasurer. The governing body may institute proceedings to remove the treasurer from office whenever, upon examination by the department of revenue administration, a certified public accountant, or a public accountant licensed by the state under RSA 301, the accounts are found to contain an irregularity or material error, or show evidence that the timely deposit of funds has not been made. For the purposes of this section, "irregularity" means an intentional misstatement of the financial statements or a theft of assets, and "material error" means a mistake or omission resulting from gross negligence which results in a material misstatement of the financial statements. The governing body may institute proceedings to remove the treasurer as follows:

Amend RSA 41:26-d, VI as inserted by section 3 of the bill by replacing it with the following:

VI. The governing body's determination under paragraph V may be appealed de novo to the superior court in the county in which the municipality is located.

Amend the introductory paragraph of RSA 41:40 as inserted by section 4 of the bill by replacing it with the following:

41:40 Removal of Tax Collector. The governing body may institute proceedings to remove the tax collector from office whenever, upon examination by the department of revenue administration, a certified public accountant, or a public accountant licensed by the state under RSA 301, the accounts are found to contain an irregularity or material error, or show evidence that the timely deposit of funds has not been made in accordance with RSA 41:35. For the purposes of this section, "irregularity" means an intentional misstatement of the financial statements or a theft of assets, and "material error" means a mistake or omission resulting from gross negligence which results in a material misstatement of the financial statements. The governing body may institute proceedings to remove the tax collector as follows:

Amend RSA 41:40, VI as inserted by section 4 of the bill by replacing it with the following:

VI. The governing body's determination under paragraph V may be appealed de novo to the superior court in the county in which the municipality is located.

AMENDED ANALYSIS

This bill standardizes the procedure for the removal of town clerks, tax collectors, and treasurers by the governing body. The bill affords the alleged offender an opportunity to answer the charges, request a hearing before the governing body, and appeal the decision de novo to the superior court.

SENATOR J. KING: HB 177 was requested by the Department of Revenue Administration. This bill standardizes the procedure for the removal of town clerks, tax collectors, and treasurers by the governing body. The bill affords the alleged offender an opportunity to answer the charges, request a hearing before the governing body, and if not satisfied with the decision, there is an opportunity to appear before the Superior Court. It is needed because the DRA lost the staff for auditing in 1982 and it is also a means for providing due process for those charged. We recommend ought to pass with amendment.

Adopted.

Ordered to third reading.

HB 179-FN, an act allowing new legislators-elect to receive a mileage allowance for attending the legislator's orientation program. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Fraser for the committee.

2696B

Amendment to HB 179-FN

Amend the title of the bill by replacing it with the following:

AN ACT

allowing new legislators-elect to receive a mileage allowance for attending the legislator's orientation program, and relative to certification regulations and standards for athletic trainers.

Amend the bill by replacing section 2 with the following:

2 Purpose. The general court finds and declares that the practice of athletic trainers in the state of New Hampshire affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The legislature also recognizes the practice of athletic trainers to be a dynamic and changing art and science, the practice of which is continually evolving to include new ideas and more sophisticated techniques in client care. The purpose of sections 3-5 of this act, therefore, is to protect the public from the unqualified practice of athletic trainers and from unprofessional conduct by persons certified to practice as athletic trainers.

3 New Chapter; Athletic Trainers. Amend RSA by inserting after chapter 332-I the following new chapter:

CHAPTER 332-J

ATHLETIC TRAINERS

332-J:1 Definitions. In this chapter:

I. "Advisory committee" means the advisory committee on athletic trainers established in RSA 332-J:4.

II. "Athletic trainer" means a person who, upon the direction of a licensed team or consulting physician, practices athletic training on injuries incurred by individuals who participate in any sports program conducted by an educational institution, professional sports organization, or sanctioned amateur athletic organization, or in any recreational sports activity.

III. "Board" means the board of registration in medicine.

IV. "National Athletic Trainers' Association, Inc." (N.A.T.A.) means the organization headquartered in Dallas, Texas dedicated to the advancement, encouragement, and improvement of the profession of athletic training.

V. "Physician" means a person licensed to practice medicine in this state pursuant to RSA 329.

VI. "Practice of athletic training" means, but is not limited to:

(a) Prevention of athletic injuries.

(b) Recognition and evaluation of athletic injuries.

(c) Management, treatment, and disposition of athletic injuries.

(d) Rehabilitation of athletic injuries.

(e) Organization and administration of athletic training programs.

(f) Education and counseling of athletes.

332-J:2 Exceptions. This chapter shall not apply to the following:

I. Self-care by a patient, or gratuitous care by a friend or family member who does not represent himself as an athletic trainer.

II. The activities of students of athletic training pursuing a degree or certificate in athletic training at an accredited or approved educational institution, if such activities and services constitute a part of a supervised course of study, and if such person is designated by a title which clearly indicates his status as a student athletic trainer.

III. The activities of athletic trainers not residents of this state, when called to perform athletic training services during a temporary stay in this state, provided such athletic trainers are legally registered in some other state, or the athletic trainer is currently certified by the National Athletic Trainers Association, Board of Certification, Inc., or both.

332-J:3 Practicing of Other Professions Not Authorized. Nothing in this chapter shall authorize any person certified under this chapter to engage in any manner in the practice of medicine, dentistry, osteopathy, podiatry, chiropractic, or any other form of method of healing, except as defined in this chapter; provided, however, nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practice of any person or health care provider licensed by the state.

332-J:4 Advisory Committee on Athletic Trainers; Removal; Expenses.

I. There is established an advisory committee on athletic trainers which shall serve to advise the board. The committee shall be appointed by the board and shall be comprised of the following 4 members, all of whom shall be residents of this state:

(a) One physician educated in the current practice of sports medicine; and

(b) 3 certified athletic trainers, who have been actively engaged in the practice of athletic training in this state for at least 36 months.

II. Members of the committee shall serve 3-year terms, and they shall hold office until successors are appointed and qualified. No member of the committee shall serve more than 2 full consecutive terms.

III. The board may remove any committee member for malfeasance, misfeasance, or nonfeasance.

IV. Each member of the committee shall be reimbursed for in-state actual and necessary travel expenses incurred in the discharge of official duties at the state employee mileage rate.

332-J:5 Duties of the Committee. The committee shall:

I. Conduct meetings on a monthly basis or as required.

II. Select a chairman and officers from the members of the committee as determined by the board under rules adopted pursuant to RSA 541-A.

III. Maintain a true record of the committee's official acts which shall be public and open to inspection at all reasonable times, except for records compiled in connection with disciplinary proceedings.

332-J:6 Immunity from Civil Action. No civil action shall be maintained against the committee or any member of the committee or its agents or

employees, against any organization or its members, or against any other person for or by reason of any statement, report, communication, or testimony to the committee or determination by the committee in relation to proceedings under this chapter.

332-J:7 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A, after consultation with the advisory committee, relative to:

I. The application procedure for certification or the granting of a temporary permit to practice as an athletic trainer under this chapter.

II. The renewal, suspension, revocation, and reinstatement of certification.

III. Educational qualifications for certification, including requirements for applicants currently certified to practice athletic training in other states.

IV. The establishment of all fees under this chapter.

V. Continuing education requirements of certified athletic trainers.

VI. The conditions for certifying out-of-state athletic trainers.

VII. Procedures for the conduct of hearings held under this chapter.

VIII. Matters related to the proper administration of this chapter.

332-J:8 Requirements for Certification. Applicants for certification as athletic trainers under this chapter shall have:

I. Received a bachelor's degree from an accredited college or university.

II. Demonstrated to the board proof of receipt of a bachelor's degree.

III. Successfully completed the certification examination administered by the National Athletic Trainers' Association, Board of Certification, Inc.

332-J:9 Requirements for Temporary Certification.

I. Any new applicant for certification as an athletic trainer who has successfully met the academic and professional requirements of RSA 332-J:8 for certification but who has not yet taken the standardized national examination may obtain temporary certification from the board to practice as an athletic trainer, provided that the person shall have demonstrated the intent to take the examination within a time period approved by the board. The temporary certification shall be valid for the period between the date of issuance of the temporary certificate and the date the applicant receives notification of a satisfactory examination score. Any person who is issued a temporary certificate by the board shall be supervised by an athletic trainer certified under this chapter. The board shall revoke the temporary certificate of any person who fails to receive a satisfactory examination score.

II. A person currently certified by the National Athletic Trainers Association, Board of Certification, Inc., or certified in another state, or both, shall be issued a temporary New Hampshire certificate upon submission of the completed application and fee required by the board. Such certification shall be in effect until the board makes a decision on such application, but no temporary certificate shall be effective for more than 60 days from the date of issuance. Practice under such temporary certificate shall be under the sponsorship of a certified athletic trainer.

332-J:10 Professional Identification. Any person certified to practice as an athletic trainer in this state may use the title "Certified Athletic Trainer" and the abbreviation, "N.H.A.T." to designate his practice of athletic training and shall produce his certificate upon the request of the board.

332-J:11 Expiration and Renewal of Certificates.

I. The board shall issue a certificate to any person qualified under RSA 332-J:8. All certificates issued by the board shall expire on Decem-

ber 31, at 12:00 a.m. of the year in which the certificate was issued. The board shall cause notification of the impending certificate expiration to be sent to each certified member at least 30 days prior to the expiration of the certificate.

II. Any person certified under this chapter who seeks to renew his certificate shall provide to the board satisfactory documentation of continuing education related to athletic training.

III. Any individual who fails to renew his certification may apply to the board for reinstatement within one calendar year after the expiration of the certificate. Any person applying for reinstatement shall be subject to the requirements of the board as set forth in this chapter and in rules adopted by the board pursuant to RSA 541-A.

332-J:12 Suspension, Revocation, or Refusal to Issue Certification. The board may deny an application for certification, may suspend or revoke the certification of any athletic trainer issued pursuant to this chapter, or may refuse to issue a renewal of a certification if it is determined, after hearing, that one or more of the following apply in that such applicant or trainer:

I. Has committed fraud or deceit in procuring or attempting to procure renewal of a certification as an athletic trainer.

II. Is unfit or incompetent by reason of negligent habits or other causes, or by reason of negligent or willful action in a manner inconsistent with the health or safety of the persons under the care of the certified athletic trainer.

III. Has engaged in dishonest or unethical conduct.

IV. Has practiced as an athletic trainer after the certification or permit has expired or has been suspended.

V. Has violated any provision of this chapter or aided or abetted others in violating any provision of this chapter.

332-J:13 Hearings.

I. The board may administer oaths or affirmations, preserve testimony, and issue subpoenas for witnesses and for documents relative to formal investigations or adjudicatory hearings.

II. Witnesses summoned before the board shall be paid the same fees as witnesses summoned to appear before the superior court, and such summons issued by any justice of the peace shall have the same effect as though issued for appearance before such court.

332-J:14 Reinstatement. Any person whose certification to practice athletic training under this chapter has been suspended by the board may apply to the board, in writing, to request a hearing for reinstatement. Upon a hearing, the board may issue a new certificate or modify the suspension or revocation of the person certified to practice as an athletic trainer.

332-J:15 Offenses. It shall be a misdemeanor for any person to:

I. Sell, fraudulently obtain, or furnish any athletic trainer certification or aid and abet in such conduct.

II. Practice as an athletic trainer under the guise of any diploma, permit, certificate, or record illegally or fraudulently obtained or issued.

III. Impersonate in any manner an athletic trainer or use the title "Certified Athletic Trainer," the letters "N.H.A.T." or any other words, letters, signs, symbols, or devices which represent or are likely to represent a person not certified under this chapter as a certified athletic trainer.

IV. Practice as an athletic trainer while a certificate or permit is suspended, revoked, or expired.

V. Fail to notify the board of the suspension, probation, or revocation of any past or present license, certification, or registration required to practice as an athletic trainer in this or any other jurisdiction.

VI. Knowingly employ an uncertified person to practice as an athletic trainer.

VII. Make false representations or impersonate or act as proxy for another person or allow or aid any person to impersonate him in connection with any examination or application for certification or request to be examined or certified.

VIII. Violate any other provision of this chapter.

4 Initial Appointments. The initial appointments to the advisory committee on athletic trainers established in section 3 of this act shall serve initial terms as follows: one initial appointee who is a certified practicing athletic trainer shall serve a term of one year; one initial appointee who is a certified practicing athletic trainer shall serve a term of 2 years; and the remaining 2 initial appointees shall serve terms of 3 years. Initial appointment terms shall not be considered full terms for the purposes of the limitations on terms in RSA 332-J:4, as inserted by section 3 of this act.

5 Current Athletic Trainers. Notwithstanding RSA 332-J:8 as inserted by section 3 of this act, any person in the state who is engaged in the practice of athletic training on the effective date of this act shall be eligible for a certificate to practice as an athletic trainer, provided that the person verifies under oath and to the satisfaction of the board that he is qualified to function in the capacity of an athletic trainer.

6 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect January 1, 1994.

AMENDED ANALYSIS

This bill allows each new legislator-elect to receive mileage for each day the legislator-elect attends the legislator's orientation program. The rate of the mileage allowed is the legislative mileage rate paid to members of the general court.

The bill also establishes certification regulations and standards for persons who are employed as athletic trainers. As part of this certification process the bill:

(a) Establishes the advisory committee on athletic trainers which acts in an advisory capacity to the board of registration in medicine.

(b) Delineates the administrative powers and duties of the board of registration in medicine.

(c) Sets forth the qualifications for applicants seeking certification by the board and the procedures for suspension, revocation, reinstatement, or renewal of certification by the board.

(d) Grants rulemaking authority to the board to adopt rules, after consultation with the advisory committee.

(e) Provides immunity from civil liability to committee members or the committee's agents or employees.

(f) Sets forth conduct which constitutes a misdemeanor.

SENATOR FRASER: Mr. President, as we all know, new legislators during the orientation period are not sworn in members of the General Court. Historically they haven't been able to recover for mileage. What HB 179 does is to allow them to recover mileage for those three days of orientation on the same formula that applies to all of the other members of the General Court . Namely, I believe it is 38 cents for the first 45 miles and

19 cents thereafter. We think that it is a good bill. It seems as Senator Disnard has recently pointed out, if we come down here as part of the orientation team, we get paid. So it seems only fair that those who are being inducted in the system should also be reimbursed for their mileage. The committee recommends ought to pass with amendment. There is a small amendment to the bill entitled, "athletic trainers", this is a result of a prorated study that has been conducted by Senator Currier and other people I believe last summer. If there are any questions on the amendment, I believe that it starts on page nine and continues on to page thirteen. The amended analysis on page thirteen of what the amendment does and if there are any questions on the amended version I will defer to Senator Currier.

Senator Shaheen moved to have HB 179-FN an act allowing new legislators-elect to receive a mileage allowance for attending the legislators' orientation program, laid on the table.

Adopted.

Recess.

Out of recess.

LAID ON THE TABLE

HB 179-FN, an act allowing new legislators-elect to receive a mileage allowance for attending the legislators' orientation program.

HB 182-FN, an act requiring the members of executive branch boards and commissions to file financial disclosure statements. Executive Departments and Administrations committee. Inexpedient to Legislate. Senator Colantuono for the committee.

SENATOR COLANTUONO: This bill calls for requiring financial disclosure of each and every volunteer member of each and every board, commission, executive branch board and commissions. The committee felt that since there are roughly 1200 boards and commissions of volunteers that serve the state that this way was too broad and unnecessary. There was no testimony that there were any problems that this bill was designed to address. The committee was concerned about the large volume of paper work that this would require and the cost to the Secretary of State to mail out and to process all of these forms. The committee decided to recommend inexpedient to legislate. If the sponsors of the bill have any specific board or commission that they think has a problem, they can address that next session, specifically.

Committee report of inexpedient to legislate is adopted.

HB 303, an act changing the manner in which a person accepts nomination for office by write-in vote. Executive Departments and Administration committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2523B

Amendment to HB 303

Amend RSA 659:88, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) A person whose name was not printed anywhere on the official state primary election ballot, and who receives the nomination of a party by write-in vote in a primary election and wishes to accept the nomination, shall file a declaration of candidacy

with the secretary of state no later than the second Monday after the primary. The declaration of candidacy shall be filed with the understanding that, where the form says "primary election," it shall be construed to mean "general election." A person who files a declaration of candidacy under this section shall be subject to the requirements of RSA 655:19 and 655:19-b relative to filing fees. The person may have the filing fee waived if he is unable to pay the fee by reason of indigency. Such person shall not, however, be required to pay the administrative assessment under RSA 655:19-c.

Amend RSA 659:88, II as inserted by section 1 of the bill by replacing it with the following:

II. ***If a person is disqualified from a nomination in accordance with [this provision]*** the provisions of paragraph I, ***then the nomination shall be awarded to the*** qualified ***person who received the highest number of votes.***

AMENDED ANALYSIS

This bill requires a person whose name was not printed anywhere on the official state primary election ballot, and who receives the nomination of a party by write-in vote in a primary election and wishes to accept the nomination, to file a declaration of candidacy with the secretary of state no later than the second Monday after the primary.

SENATOR COLANTUONO: This bill provided a new requirement that any person who wins nomination by write in votes, who was not otherwise on the ballot, has to file a declaration of candidacy with the Secretary of State after the primary just like any other candidate. So it equalizes that aspect of the law and requires them to make the choice under the campaign finance law.

Amendment adopted.

Ordered to third reading.

HB 381, an act prohibiting a person from working at a polling place as an election officer if a member of the officer's immediate family is on the ballot. Executive Departments and Administrations committee. Inexpedient to Legislate. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, this bill wouldn't be here except that there was some sort of an altercation in one of the polling places in Franklin, apparently last year. The only person who came and testified for the bill was a gentleman who is an elected official up there and he readily admitted that there was some sort of a family group where one of the members of the checklist was also on the ballot. It appeared to the committee that had the moderator and the police done their job, this bill would never have been brought to the attention to the Senate. So we urge the Senate to adopt the committee's report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 393, an act relative to duties of supervisors of a checklist. Executive Departments and Administration committee. Ought to Pass. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, this is a housekeeping bill. All that it does is include the town to supervise the supervisors of a checklist as well.

Adopted.

Ordered to third reading.

HB 490, an act permitting a registered voter who is registered as undeclared to vote in a primary election and on the day of the primary election register again as undeclared. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2519B

Amendment to HB 490

Amend RSA 654:34, II(b) as inserted by section 3 of the bill by replacing it with the following:

(b) [He] ***A voter*** may also register as a member of a party at any primary by requesting [that he] ***to*** be registered as a member and voting the ballot of the party of [his] ***the voter's*** choice. ***A voter may also register once again as an undeclared voter after voting in a primary as a registered member of a party by returning the card provided for in paragraph V to the person at the polls designated by the town or city clerk to accept the card. All such cards shall be in the possession of the supervisors of the checklist at the close of the polls on election day.***

Amend RSA 654:34, V(b) as inserted by section 5 of the bill by replacing it with the following:

(b) The supervisors of the checklist, upon receipt of such a card, shall keep it until their next session of supervisors of the checklist for changing party registration at which time the sender's party registration shall be changed as indicated on the card.

Amend RSA 654:34, V as inserted by section 5 of the bill by deleting subparagraph (c).

SENATOR COLANTUONO: This bill has widespread public support. A lot of the independent voters out there want to be able to vote in the primary and then be able to change back to that same status after they vote. This bill will do that. The amendment simply clarifies some of the language to meet some of the concerns of the town and city clerks and the Secretary of State's office. But it is a simple bill and the title tells exactly what the bill does.

Amendment adopted.

Ordered to third reading.

HB 548, an act providing staggered terms for county commissioners in Carroll county. Executive Departments and Administrations committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: This was a bill that was introduced with the Carroll county delegation and it was unanimous with the delegation. It also has the support of all the commissioners. It merely adds Carroll county to the list of those counties that have staggered terms for their commissioners. The point being that if something were to happen and there might be some terms expiring, and there might be three new commissioners who wouldn't know what was going on and that is why they filed the bill. I would ask the Senate to pass this bill.

SENATOR BARNES: Senator Bourque, this is a crazy question for you. Last year this same bill came through for Rockingham County, how many counties in the state are on the old method, did your committee discuss that at all?

SENATOR BOURQUE: I wasn't there at the committee hearing so I could defer you to Senator Currier.

SENATOR BARNES: Would you believe that I would think that all of the counties would get together and do the same darn thing instead of every year bringing this piece of legislation in. We are doing it one county at a time every year?

SENATOR BOURQUE: I would believe.

SENATOR DISNARD: Mr. President, I move to table this bill. I spoke to the Chairman and the Senator from Carroll county and I wish to table this for an amendment similar to be attached to this bill.

Senator Disnard moved to have HB 548 an act providing staggered terms for county commissioners in Carroll county, laid on the table.

Adopted.

LAID ON THE TABLE

HB 548, an act providing staggered terms for county commissioners in Carroll county.

HB 596-FN, an act to provide rulemaking notice to municipalities and legislators. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2517B

Amendment to HB 596-FN

Amend RSA 541-A:3-a, VI(a) as inserted by section 1 of the bill by replacing it with the following:

(a) The rulemaking register shall be made available upon request to agencies and officials of this state free of charge. The director of legislative services shall send a copy of the rulemaking register upon request to the clerk of each municipality in the state and upon request to any member of the general court free of charge. Copies of the register which are sent to municipalities and to members of the general court shall be sent by first-class mail.

AMENDED ANALYSIS

This bill requires the director of legislative services to send a copy of the rulemaking register upon request to the clerk of each municipality in the state and to any member of the general court who requests a copy of the register. Copies of the rulemaking register shall be sent by first-class mail without charge to the recipient.

SENATOR COLANTUONO: The original bill requires the Director of Legislative Services to send a copy of the rulemaking register to the clerk of every municipality in the state at the expense of the state, first class mail. What the amendment does is to simply say that before a municipality will get it free, they have to request it and that was designed to keep the cost down after we found out what the cost would be. With that amendment we recommend ought to pass.

Amendment adopted.

Ordered to third reading.

HB 624-FN, an act creating a unit within the department of environmental services to certify certain scientists. Executive Departments and Administrations committee. Re-refer to committee. Senator Currier for the committee.

SENATOR CURRIER: This bill is not unlike athletic trainers, it has been around for a long time. It has been referred and re-referred by a number of various House committees. There are still some serious questions regarding the placement of the wetlands scientist in the Department of Environmental Services and so on and so forth to the point where the committee could not really come up with a clear, concise, decision of how to react to some of the recommendations on the original legislation. So we are recommending that the bill be rereferred to committee for further work.

Committee report of re-referred is adopted.

HB 673-FN, an act relative to accounting requirements for moneys received by the State Treasurer. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Currier for the committee.

2689B

Amendment to HB 673-FN

Amend the title of the bill by replacing it with the following:

AN ACT

relative to accounting requirements for moneys received by the state treasurer and relative to the applicability date for benefits for employees who transfer to another aspect of state service and relative to fee setting by the planetarium commission.

Amend the bill by replacing all after section 1 with the following:

2 Fee Setting by the Planetarium Commission. Amend RSA 21-K:14, III to read as follows:

III. ***Set and*** collect all fees generated by the planetarium, such fees to be used by the commission in its duties and for its expenses. ***Reasonable fees may be set by the commission without regard to RSA 541-A.*** Such accounts shall be subject to annual audit by the office of the legislative budget assistant.

3 Rulemaking Regarding Fees. Amend RSA 21-K:14, VII to read as follows:

VII. Adopt rules under RSA 541-A relative to [the fees to be charged,] the method of collection of [such] fees, and any other matters it deems necessary for the proper operation of the planetarium.

4 Applicability Date; Employees who Transfer to Another Aspect of State Service. Amend 1989, 396:5 to read as follows:

396:5 Applicability. The provisions of sections 1-4 of this act shall apply as a remedial measure, to any classified, unclassified, unclassified legislative employee, or nonclassified employee who transferred, without a break in service, to another aspect of state service on or after January 1, [1987] ***1980***.

5 Effective Date.

I. Sections 2-4 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill requires that the department of administrative services, rather than the state treasurer, shall maintain separate accounts or funds, as is currently provided in RSA 6:12.

The bill amends the applicability date for the transfer of sick and annual leave and longevity credit for certain state employees from January 1, 1987, to January 1, 1980.

This bill also allows the planetarium commission to set fees without regard to the administrative procedures act.

SENATOR CURRIER: The amendment is on page 14 of today's calendar. The amendment deals with an amendment that was requested by Senator Barnes, Senator McLane and Representative Gilmore dealing with an issue with the Christa McAuliffe Planetarium Commission. It specifically deals with the rate setting for attendance at the Planetarium. That is the amendment on the bill. The bill itself is a bill that was requested by the State Treasurer in terms of dealing with requirements from money received by the State Treasurer. The committee urges your ought to pass with amendment motion.

Amendment adopted.

Ordered to third reading.

HB 692, an act transferring rulemaking authority from the Current Use Board to the chairman of the Current Use Board, who will implement the recommendations of the board. Executive Departments and Administration committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill deals with the problems that the committee had in regard to rulemaking authority in terms of being able to provide timely current use information from the Current Use Board in a sense that they only meet monthly, and the fact that their assessments and so forth are done regarding the current use implementation late in the fall. And then by the time that it got through the process of rulemaking there was almost no notification time for the cities and towns to set the current use rates for the upcoming year. So it was recommended that the rulemaking authority be changed so that the chairman of that board could then implement any changes that came as a direct result of going through the rulemaking authority under RSA 541:A and the committee recommends ought to pass.

Adopted.

Ordered to third reading.

HB 140-FN-A, an act establishing a task force to study economic incentives and technological opportunities to assist state and local governments and business and industry to increase waste reduction and recycling. Finance Executive committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President and members of the Senate, this is a policy bill already passed down from this Senate, down into Finance where there was a question of whether or not there was a $50,000 appropriation in this bill. There is not a $50,000 appropriation in this bill. It would be done through private funds. The study would be covered by private funds. Senate Finance says ought to pass.

Adopted.

Ordered to third reading.

HB 227, an act relative to enforcement of parking violations. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2636B

Amendment to HB 227

Amend RSA 231:132-a, I as inserted by section 1 of the bill by replacing it with the following:

I. All violations of such parking restrictions and charges shall be deemed the responsibility of the registered owner of the vehicle. Such registration may be proven as set forth in RSA 261:60. Such registered owner shall be conclusively presumed to be in control of the vehicle at the time of the parking violation, and no evidence of actual control or culpability need be proved as an element of the offense. It shall be an affirmative defense that at the time of the infraction the vehicle was beyond the control of the registered owner as a result of a violation of RSA 262:12, 637:3 or 637:9 or a similar statute in another jurisdiction.

SENATOR COLANTUONO: This bill is designed to make it easier for towns and cities to enforce parking violations. It makes it clear that the parking fine goes to the owner of the car regardless of whether the owner was driving it or not; although the amendment makes it clear that in the event that the vehicle was stolen or used without permission, there is an affirmative defense available. So with that amendment the committee recommends ought to pass.

Amendment adopted.

Ordered to third reading.

HB 356-LOCAL, an act relative to legal disputes between the state and political subdivisions of the state regarding Article 28-a violations. Judiciary committee. Ought to Pass with Amendment. Senator Baldizar for the committee.

2639B

Amendment to HB 356-LOCAL

Amend the bill by replacing section 1 with the following:

1 New Section; Suits Involving Mandated Programs. Amend RSA 31 by inserting after section 3 the following new section:

31:3-a Suits Involving State-Mandated Programs. If legal proceedings have been commenced by a town against the state over whether a state program or responsibility violates the provisions of Part I, Article 28-a of the New Hampshire constitution relative to mandated programs, all penalties or liens which the state may impose on the town for failure to comply with the state program or mandate shall be stayed until the court proceedings are completed. For the purposes of this section, the term "town" shall mean every political subdivision of the state, which shall include any village district, school district, city, county, unincorporated town, or unorganized place.

AMENDED ANALYSIS

This bill provides that if legal proceedings have been commenced by a political subdivision of the state against the state over whether a state program or responsibility violates the provisions of Part I, Article 28-a of the New Hampshire constitution relative to mandated programs, all penalties or liens which the state may impose on the political subdivision for failure to comply with the state program or mandate shall be stayed until the court proceedings are completed.

SENATOR BALDIZAR: Mr. President, may I say that it is nice to see you in the Chair this afternoon. HB 356 is a bill that provides that if

legal proceedings have been commenced by a political subdivision of the state against the state over whether a state program or responsibility violates the provisions of part one, article 28-a of the New Hampshire Constitution relative to mandated programs, all penalties and fines which the state may impose on the political subdivision, per failure to comply with the state program or mandate, shall be stayed until the court proceedings are completed. It allows the courts to determine if the state should pay cost. The committee asks that you support the committee's recommendation of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 244, an act relative to parking violation enforcement. Transportation committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: Basically this is enabling legislation for any city or town dealing with parking violations. It gives them the authority to make parking violations part of the civil process as opposed to the present criminal process. The cities and towns would still have to enact ordinances detailing how they would use the authority and this bill merely gives them the authority to do so if they wish. Why is it needed? Because several of the towns appear to have problems enforcing their present parking ordiances. In the criminal process, "the evidence must be that any decision reached is that beyond a reasonable doubt" and in a civil process, which this bill proposes, a preponderance of evidence must be produced. Again, this is just enabling legislation, no city or town has to do this should they not wish to. The committee voted ought to pass.

SENATOR BARNES: Senator Cohen, why wasn't this put in with HB 227? Why wasn't this made into one bill instead of having two separate bills, are they different?

SENATOR COHEN: I can't answer that, Senator. It was put in separately.

SENATOR MACDONALD: One is dealing with RSA 231 versus RSA 41. There is a difference in the two.

SENATOR BARNES: If you say so, sir.

Adopted.

Ordered to third reading.

HB 330, an act relative to the authority of municipalities to designate certain roads as class V highways. Transportation committee. Ought to Pass with Amendment. Senator Cohen for the committee.

2486B

Amendment to HB 330

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a committee to study parking at Hampton beach state park and returning certain state-owned land to the town of Belmont.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee to Study Parking at Hampton Beach State Park Established; Responsibilities. There is hereby established a committee to study parking at Hampton beach state park. The committee shall be responsible for gathering information on the fees charged for parking including metered, leased and parking lots, the availability of parking and the establishment of reasonable rates in light of the economic climate for business, industry and the state. The committee shall consist of the following members:

I. One person from the division of parks and recreation, department of resources and economic development, familiar with parking at state facilities, appointed by the director of parks and recreation.

II. Two house members, appointed by the speaker of the house.

III. Two senators, appointed by the president of the senate.

IV. Two public members from the Hampton area, appointed by the governor.

V. One public member from the Hampton selectman's board, appointed by the board.

VI. One public member, appointed by the Hampton beach precinct.

2 Meetings; Compensation. The members shall choose a chairperson from among the members of the committee. The members of the committee shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate when attending to the duties of the committee. The first senate-appointed member shall call the first meeting prior to July 1, 1993.

3 Report. The committee shall make a report evaluating the parking at Hampton beach state park. The report shall address the fees charged for parking and what spots are leased for parking. The committee shall also address the feasibility of constructing a parking garage in the Hampton area. The committee shall submit its report, including recommendations for legislation, to the governor, the senate president and the speaker of the house on or before November 1, 1993.

4 Return of Certain Lands to the Town of Belmont. All lands acquired by the state by eminent domain, along the shore of Lake Winnisquam in the town of Belmont, for future highway construction or for general public benefit of scenic or recreational purposes under 1988, 243:1 shall be returned to the town of Belmont if the department of transportation does not choose to construct a bypass on such property within 2 years of the effective date of this section.

5 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a committee to study the parking at Hampton beach state park.

The committee shall report to the governor, the senate president and the speaker of the house on or before November 1, 1993.

The bill returns certain lands, acquired by the state by eminent domain, along the shore of Lake Winnisquam to the town of Belmont if the department of transportation does not choose to construct a bypass on the property within the next 2 years.

SENATOR COHEN: What we did was to gut the original HB 330 with permission of the sponsor. There were two bills dealing with this subject and one was SB 41 which passed the House. Testimony received during the hearing of SB 41 dealt with the matter more clearly than HB 330. Because we had a blank bill that we could use, this was in essence our trailer bill. We have put back the Hampton Beach State Park Study Committee concerning parking. This originally passed the Senate and was

killed by the House. With this, we will try it again. We were also asked to add an amendment dealing with certain lands in the town of Belmont. It seems self explanatory. If the state does not choose to construct a bypass on certain property within two years, the land will then revert back to the town of Belmont. The vote of the committee was ought to pass with amendment.

Recess.

Out of recess.

Amendment Adopted.

Senator Russman moved to have HB 330 an act relative to the authority of municipalities to designate certain roads as class V highways, laid on the table.

Adopted.

LAID ON THE TABLE

HB 330 an act relative to the authority of municipalities to designate certain roads as class V highways.

HB 106-FN, an act removing the requirement that the state vaccinate bovines against brucellosis. Wildlife and Recreation committee. Re-refer to committee. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, the Senate Wildlife committee felt that all that this bill does is to change the fact that the Department of Agriculture would have to vaccinate, like "shall" to "may". The fact that he would have to do it, the committee felt that they needed to know more before they felt that the Department of Agriculture should not have to be liable for this particular procedure. So therefore, we decided we would like to look at it one more year, so we recommended re-refer to committee.

Committee report of re-refer is adopted.

HB 139, an act relative to requirements for transportation of deer and official seals for fur-bearing animal skins. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator Disnard for the committee.

2642B

Amendment to HB 139

Amend the title of the bill by replacing it with the following:

AN ACT

relative to requirements for transportation of deer, official seals for fur-bearing animal skins and illegal night hunting.

Amend the bill by replacing section 1 with the following:

1 Illegal Night Hunting; Presumption Modified; Birdshot Reference Added. Amend RSA 208:8, (IV)b to read as follows:

(b) Uses [or is found in the possession of] shotgun shells carrying shot larger than number 4 ***birdshot.***

AMENDED ANALYSIS

This bill modifies the requirements for transportation of deer and requires fur-bearing animal skins to bear an official seal prior to sale.

The bill also inserts a reference to "birdshot" in an RSA provision on illegal night hunting and modifies a presumption of knowledge or belief under the illegal night hunting statute.

SENATOR DISNARD: Mr. President, due to insufficient information in the calendar, I move to table.

Senator Disnard moved to have HB 139 an act relative to requirements for transportation of deer and official seals for fur-bearing animal skins, laid on the table.

Adopted.

LAID ON THE TABLE

HB 139, an act relative to requirements for transportation of deer and official seals for fur-bearing animal skins.

HB 150, an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator Roberge for the committee.

2611B

Amendment to HB 150

Amend the bill by replacing sections 1 and 2 with the following:

1 Hunting After Revocation. RSA 214:21 is repealed and reenacted to read as follows:

214:21 Hunting, Etc. After Revocation; Eligibility for License.

I. No person who has had a license suspended or revoked shall take or attempt to take the wildlife permitted to be taken by said license. A person whose license has been revoked indefinitely or for a period of time under any provision of this chapter shall be ineligible to purchase a new license before the expiration of the stated period without the prior written approval of the executive director. No person shall be eligible to receive any license issued by the fish and game department if he is in arrears for any fines or costs for a violation of the laws relative to fish and game. Any person violating the provisions of this section shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

2 New Section; Hunting While in Default. Amend RSA 214 by inserting after section 21 the following new section:

214:21-a Hunting When in Default; Eligibility for License.

I. No person shall hunt, fish, trap or engage in any activity regulated by this title if such person is in default with any state court for the violation of any section of title XVIII and such person's license to hunt, fish, trap or engage such activities shall be suspended by the executive director.

II. No person shall purchase any license issued by the department if such person is in default with any state court for the violation of any section of this title.

III. Any person who has had a license suspended or revoked pursuant to paragraph I of this section shall apply to the executive director before such license shall be restored.

IV. The executive director shall assess and collect a $50 reinstatement fee against any person whose license is suspended as permitted in paragraph I of this section prior to the reinstatement of said license. This paragraph may be waived by the executive director for just cause.

V. Any person who violates any provision of this section shall be guilty of a misdemeanor.

AMENDED ANALYSIS

This bill modifies the ability to purchase a license after revocation and prohibits hunting, fishing and trapping if the person is in default with any judicial system in the state.

SENATOR ROBERGE: Mr. President and members of the Senate, this bill modifies the ability to purchase a license after revocation. It prohibits hunting, fishing and trapping if a person is in default with any judicial system of the state. The bill also requires the Commissioner of Safety to suspend a person's privilege to operate a motor vehicle if such a person is in arrears of any fine or cost for a violation of any fish and game statute.

Senator Cohen moved to have HB 150 an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state, laid on the table.

Adopted.

LAID ON THE TABLE

HB 150, an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state.

HB 176-FN, an act establishing a procedure to test and quarantine equines imported from CEM countries. Wildlife and Recreation committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, establishing a procedure to test and quarantine equines, horses, imported from CEM countries. CEM countries are located in Europe and there is a disease and we don't have any of this disease in the United States and it is necessary to quarantine these very fine horses before we allow them to be mixed in with the horses in the United States. This particular person wanted to start a quarantine station here in the state because the nearest one to here is in New York State or Maryland and we thought that that was a little far to go and it would be a good business for him to be able to start up here in our state.

Adopted.

Ordered to third reading.

HB 221-FN, an act modifying the Fish and Game Department's eminent domain powers. Wildlife and Recreation committee. Re-refer to committee. Senator Wheeler for the committee.

Recess.

Out of recess.

SENATOR BLAISDELL: Mr. President, with the consent of Senator Wheeler and also Senator Cohen, I ask that this be recommitted back to the committee. This is a very important piece of legislation for Fish and Game and I want to give it a little more time so that maybe I can turn it around a little bit. So I ask that it be recommitted to the committee.

MOTION TO RECOMMIT

Senator Blaisdell moved to have HB 221-FN an act modifying the Fish and Game Department's eminent domain powers, recommitted to committee.

Adopted.

HB 221-FN is recommitted.

HB 232, an act permitting the checking of traps at night subject to certain restrictions. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator Wheeler for the committee.

2627B

Amendment to HB 232

Amend the title of the bill by replacing it with the following:

AN ACT

permitting a licensed trapper to check traps anytime and repealing a certain affirmative defense relative to the taking of raccoons.

Amend the bill by replacing all after the enacting clause with the following:

1 Checking Traps With Lights Permitted. Amend RSA 208:8-a, I to read as follows:

I. Any person who deliberately uses an artificial light during the period from October 1 through December 31 to illuminate, jack, locate or attempt to locate wild birds or wild animals shall be guilty of a violation. ***Nothing in this section shall be construed to prohibit the use of lights for checking traps as permitted in RSA 210:13 or the hunting of raccoons as provided in RSA 210:2.***

2 Visiting Traps; Time Limitation Removed; Reference Added. Amend RSA 210:13 to read as follows:

210:13 Visiting Traps. A person shall visit his traps at least once in each calendar day, [but such visiting hours shall be between 1/2 hour before sunrise and 1/2 hour after sunset only,] provided, however, that a person trapping for beaver through the ice during the open season therefor, shall visit his traps once in each 72 hours. Only a person whose name is either stamped or engraved on the traps or on a durable tag securely affixed to the traps shall have the authority to tend the traps. In case of an emergency, the owner of the traps may grant written permission to another duly licensed trapper to tend the traps. ***Nothing in this section shall be construed to prohibit the use of lights for checking traps.***

3 Repeal. RSA 208:8-a, II, relative to the taking of raccoons as an affirmative defense to the illegal use of light for hunting, is repealed.

4 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill permits a licensed trapper to check traps anytime. Current law requires this be done only between 1/2 hour before sunrise and 1/2 hour after sunset. This bill also repeals a certain affirmative defense of taking raccoons.

SENATOR WHEELER: This Senate Bill extends a time that trappers can check their traps. It should be good for the trappers now that trappers aren't earning a living from trapping. They can check their traps after work and before work. It should be good for the animals because they will be out of their traps sooner. The committee unanimously recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

Recess.

Senator Hough in the Chair.

HB 575-FN, an act limiting dog training and authorizing the Executive Director of Fish and Game to issue permits for the use of bear dogs to control agricultural and property damage. Wildlife and Recreation committee. Inexpedient to Legislate. Senator Lovejoy for the committee.

MOTION TO RECOMMIT

Senator Blaisdell moved to have HB 575-FN an act limiting dog training and authorizing the Executive Director of Fish and Game to issue permits for the use of bear dogs to control agricultural and property damage, recommitted to committee.

Adopted.

HB 575 is recommitted.

TAKEN OFF THE TABLE

Senator W. King moved to have HB 330 an act relative to the authority of municipalities to designate certain roads as class V highways, taken off the table.

Adopted.

HB 330, an act relative to the authority of municipalities to designate certain roads as class V highways.

SENATOR W. KING: Floor amendment 2534 deals with an issue that is, I am sure, near and dear to every person in the Senate who has communities who have Rotary penny sales or other kinds of events that are sponsored by a nonprofit charitable organization within your communities. For the past 100 years, over state roads that ran through local towns, and I am not talking about highways, I am talking about roads going through the towns, many of these organizations have put up banners that announce the upcoming Kiwanis Fair, Rotary Club, penny sale, hospital fair or whatever. Now that the Department of Transportation has passed a new rule that says that they have to go to the Department of Transportation in order to get permission to put these up. They have been doing it for 100 years and nobody has been hurt up to this point so it seems to me that they could probably do it for another 100 years without worrying about anyone being hurt. This amendment merely says that the Department of Transportation doesn't have the authority to do that.

Senator W. King offered a floor amendment.

2534B

Floor Amendment to HB 330

Amend the title of the bill by replacing it with the following:

AN ACT

relative to the authority of municipalities to designate certain roads as class V highways and exempting community organizations from having to obtain a permit to erect signs advertising nonprofit events over certain highways.

Amend the bill by replacing all after section 2 with the following:

3 New Section; Exemption from the Permit Requirement. Amend RSA 236 by inserting after section 72-a the following new section:

236:72-b Exemption from the Permit Requirement. No nonprofit community organization shall be required to obtain a permit under RSA

236:72 to erect an advertising device, as defined in RSA 236:70, I, which promotes a nonprofit community event. Nothing in this section shall be construed to allow advertising devices to be erected in areas or in such a manner as is otherwise precluded by law.

AMENDED ANALYSIS

This bill allows the legislative bodies of certain towns to delegate authority to the selectmen to accept any road as a class V highway if it has been previously approved by the planning board.

This bill also exempts community organizations from having to obtain a permit to erect signs promoting nonprofit community events.

SENATOR MCLANE: Senator King, it seems to me that the problem isn't ever putting a sign up, it is the people who don't take the sign down. Are there rules concerning how long they can leave it up or what guarantee do you have that a sign is just left up there until it rots or stays for a couple of months, what is the timing?

SENATOR W. KING: Senator McLane, the communities have always dealt with the issue. I have never heard a complaint from the town of Plymouth or the town of Littleton or any other town about the Rotary Clubs or the Fire Department's chicken barbecue signs staying up too long. So I think that that is an issue for the local community to deal with and they have the authority to do something about it.

Floor amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Wheeler moved to have HB 665-FN-A an act establishing a committee to study the effects and feasibility of a statewide property tax to fund education, taken off the table.

Adopted.

HB 665-FN-A, an act establishing a committee to study the effects and feasibility of a statewide property tax to fund education.

SENATOR LAMIRANDE: Senator Disnard, I just have one question. I realize that it is only a study committee. In fact, I was in the hearing with the Senate. My question would be is the study committee for the state wide property tax over and above the already in place tax?

SENATOR DISNARD: That is a question that the committee is going to have to discuss. I would assume, yes, but I don't want to be in a position of speaking for the committee when they have specific assignments.

SENATOR HOLLINGWORTH: Senator Disnard, I am a little bit confused because it seems like a study on the obvious. We already know that education is paid for by property taxes so why are studying the obvious?

SENATOR DISNARD: Well, I assume that we are studying the obvious which was requested by the bill's sponsor and passed by the House. It is obvious that we want to protect children and we want to give them the best, and we want to help the property taxpayer. They want to find out, as I would assume, is it possible to lower property taxes.

Question is on ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator Blaisdell.

The following Senators voted Yes: Lamirande, W. King, Disnard, Blaisdell, Baldizar, McLane, J. King, Russman, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Pignatelli, Colantuono, Podles, Barnes, Delahunty.

Yeas: 12 - Nays: 11

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Roberge moved to have HB 113, an act expanding the financial authority of towns, taken off the table.

Adopted.

HB 113, an act expanding the financial authority of towns.

Recess.

Out of recess.

Question is on the committee amendment.

Amendment adopted.

SENATOR ROBERGE: Mr. President and members of the Senate, I am very proud to be the author of this amendment 2718. I take complete responsibility for it and I am very happy that it is mine. Senator Currier, would you like me to go on about it being my amendment and not yours?

SENATOR CURRIER: No, that is enough, thank you.

SENATOR ROBERGE: All that this amendment does is to add four words after Bedford, "except tax anticipation notes". This amendment would retain authority by the town council as it is now of operational nature and the attorney has said that this authority is consistent with state law.

Senator Roberge offered a floor amendment.

2718B

Floor Amendment to HB 113

Amend the bill by replacing section 17 with the following:

17 Town of Bedford Bond Authorization Procedures. The provisions of RSA 33:8 and 33:8-a shall continue to apply to the authorization of bonds and notes by the town of Bedford, except tax anticipation notes, notwithstanding any provisions to the contrary in the town's home rule charter or in RSA 33:8-d. All actions taken by the town since August 23, 1991, in reliance upon the provisions of RSA 33:8 and 33:8-a are hereby confirmed and ratified.

Floor amendment adopted.

Ordered to third reading.

REPORT OF COMMITTEE ON ENROLLED BILLS

The committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

HB 152, changing the time period within which a claim may be submitted against the state.

HB 486, designating segments of the Piscataquog River for the Rivers Management and Protection Program.

HB 109, increasing certain fees and making technical corrections in the Tobacco Tax and Timber Tax.

HB 141, modifying the acid deposition control program.

HB 169, allowing town and school district meetings to be held outside the town or school district and relative to the charter of the Holderness School.

HB 254, relative to the authority of the State Treasurer to void state checks and relative to increasing the fee for checks returned to the state.

HB 348, standardizing forms used by insurance companies for medical benefits claims.

HB 353, relative to the Police Commission in the town of Conway.

HB 462, relative to the Victims Assistance Fund.

HB 494, establishing a joint committee on recodification of solid waste laws.

HB 669, transferring the right to appeal in certain cases from a decision of the Labor Commissioner on Workers' Compensation from the Superior Court to the Compensation Appeals Board.

SB 31, repealing sections referring to the loyalty oath requirement which was repealed last year.

SB 44, adding to the membership of the Emergency Shelter Commission and the Christa McAuliffe Planetarium Commission.

SB 81, creating a task force to coordinate resources addressing sexual assault and sexual harassment at postsecondary institutions.

SB 121, nullifying the law which amends RSA 457:29 relative to marriage license fees effective July 1, 1994 and raising the fee for marriage licenses.

SB 132, relative to the Revised Statutes Annotated, and creating a committee to study the rulemaking process.

SB 134, establishing a committee to study the need for reasonable standards and procedures for contracting services by the state.

SB 217, clarifying the laws relative to guardianship and expanding a guardian's powers.

Senator Currier moved Adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

HB 102, changing the penalty for DWI and boating while intoxicated while transporting a person under the age of 16.

HB 110, relative to use and derivative use immunity.

HB 128, relative to the penalty for falsifying applications and to the fee for picture identification cards.

HB 238, authorizing a member of a cooperative school district to serve on a town budget committee.

HB 290, establishing priority of real estate tax liens.

HB 363, exempting certain nonresidents who are peace officers or hold valid licenses to carry loaded pistols and revolvers from obtaining such license in this state.

HB 522, relative to the observance of Memorial Day.

HB 560, changing procedures regarding appointment of guardians of minors.

HB 645, repealing a provision requiring approval by the superior court of rules adopted by the board of tax and land appeals, increasing a filing fee charged by the board; and relative to the effect of an abatement appeal on subsequent taxes.

SB 185, allowing the Director of the Division of Human Services to reorganize the rules of the Medical Assistance Program.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

HB 125, relative to federal funding for rebuilding, modernizing, and maintaining rail properties.

HB 215, relative to extradition.

HB 220, relative to the committee studying the real estate valuation and revaluation process.

HB 335, relative to listing the names of candidates on ballots used in voting machines.

HB 349, requiring that selectmen or assessing officials be allowed access to property as a prerequisite to appeal of any matter pertaining to a property tax.

HB 537, relative to registration of sexual offenders.

HB 585, requiring state agencies to purchase recycled materials.

HB 595, allowing HIV testing for AIDS of a perpetrator of certain crimes at the request of the victim.

HB 601, exempting from the real estate transfer tax certain transfers between land trusts and housing cooperatives.

HB 682, reducing the number of peremptory challenges to jurors available to both prosecutors and defense in a trial for murder in the first degree.

HB 693, legalizing the actions of the Kingston Town Meeting.

SB 5, repealing article 6 on the uniform commercial code on bulk sales and making conforming amendments.

SB 78, requiring that student records of transferring students be provided upon request.

HB 607, relative to the plea-by-mail program.

Senator Currier moved adoption.

Adopted.

Enrolled Bill Amendment to SB 55

#2695

Amend section 4 of the bill by replacing lines 2-4 with the following: Organizations. Amend RSA 420-B by inserting after section 8-h the following new section:

420-B:8-i Incontestable Provision. The validity of the contract shall

Senator Currier moved adoption.

Adopted.

Enrolled Bill Amendment to SB 48

#2634

Amend section 3 of the bill by replacing lines 1-4 with the following:

3 Date of Matching Contributions Conditionally Extended; Additional Appropriation Date Extended. Amend 1986, 184:2, II(a) as amended by 1987, 372:8, 1989, 129:1 and 1990, 271:1 to read as follows:

Senator Currier moved adoption.

Adopted.

Enrolled Bill Amendment to HB 271

#2694

Amend section 2 of the bill by replacing it with the following:

2 New Paragraph; Definition. Amend RSA 147-A:2 by inserting after paragraph XII-a the following new paragraph:

XII-b. "Serious bodily injury" means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or the function of any part of the body.

Senator Currier moved adoption.

Adopted.

Enrolled Bill Amendment to HB 163-FN

#2697

Amend the title of the bill by replacing it with the following:

AN ACT

establishing and continually appropriating a leaking underground storage tank cost recovery fund.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Contingency; Renumbering. If any other act of the 1993 regular session of the general court which contains an amendment to RSA 6:12, I which inserts any new subparagraph into the paragraph becomes law, the director of legislative services is authorized to make any technical changes to the numbering in any bill sections or RSA sections inserted by this or any other act as necessary to conform said sections to proper bill or RSA format. Any such changes shall be subject to the approval of the president of the senate and the speaker of the house of representatives. The authority granted under this section shall not include the power to make any substantive changes and shall expire upon printing of the 1993 session laws.

Senator Currier moved adoption.

Adopted.

Enrolled Bill Amendment to SB 186-FN

#2536

Amend section 1 of the bill by replacing lines 1-3 with the following:

1 New Paragraph; Definition Added. Amend RSA 485-A:2 by inserting after paragraph XX the following new paragraph:

XXI. "Innovative/alternative waste treatment" means treatment which

Senator Currier moved adoption.

Adopted.

NOTICE OF RECONSIDERATION

Senator W. King served reconsideration on HB 330, an act relative to the authority of municipalities to designate certain roads as class V highways.

ANNOUNCEMENTS

SENATOR HOUGH (In the Chair): I have three members who have requested to speak under the provisions of Rule #44. The temperature is rising and we are getting to the end of our session and let's not lose sight of basic courtesy to our colleagues. When a member requests to speak under Rule #44, if conversations are absolutely necessary, please have them take place in the anteroom; otherwise, please pay attention to your colleagues and give them the same courtesy that you would expect to be given yourself.

SENATOR BALDIZAR (Rule #44): I want to discuss the issue of term limits and the process regarding that issue. During my campaign for state Senate, I publicly stated several times that I would support term limits. On April 25 the Nashua Telegraph published a letter to the editor which I wrote. In it I discussed four bills that I felt were timely and of interest to the people of my senate district. One of those was term limits - again I said I supported them. I also said I would support campaign finance reform and reform of retirement benefits. Two weeks ago, Senate Judiciary, of which I am Vice Chairman, voted 3 to 2 to pass 390 with amendments. I, along with Senators Burt Cohen and Bev Hollingworth voted to pass the bill as amended. Since there were two votes against it, I voted to pass the bill as amended because I feared it would have been killed in committee. I was the last person to vote in committee. I voted "ought to pass with amendment." Over the past two weeks I have received approxiamately 300 phone calls urging me to support term limits. Yesterday several of my constituents called me to tell me they were distressed, upset and concerned. Had I changed my support for term limits? These people called the 800 number (1-800-432-7428) given by the New Hampshire Term Limits Coalition and were told by them that I did not support House Bill 390. Since I have publicly stated my support for term limits and I am on public record in support, this is an obvious, deliberate, misrepresentation of the facts and the public at large is being manipulated. They have been told to call me. And again, I reiterate I have had over 300 phone calls and probably 100 to 200 letters. People have gone out of their way to call me and they have been misled by this group because all along my support has been solid. I feel sorry for the people who have been misinformed about term limits. The New Hampshire Term Limits Coalition has not been very open about their agenda and they certainly have not been

honest to my constituents. Especially those who took the time to call me. I want to thank the citizens of New Hampshire who are involved and who care about this issue. There are people who want to make this a partisan issue — it is not. I believe it's about good government.

SENATOR LOVEJOY (Rule #44): Mr. President and fellow Senators, I will take just a few minutes of your time and I know that you want to get going to other things. But I believe that we should recognize and give credit where credit is due and when an exceptional service has been performed - and I want to call your attention to the service that is and has been performed by the Blue Job Mountain Fire Tower in Strafford. The Blue Job Fire Tower serves and has served our district and our state for as long as I can remember and it has spotted and reported fires in the early stages to the area department resulting in untold savings in loss of property, wildlife and crops. Just last year the Tower at Blue Job reported 54 fires and saved, in that year alone, much money in potential losses to area cities and towns. On Saturday, May 1st of this year, the Blue Job Tower spotted a fire burning in Rochester. The fire, not spotted yet by residents of the Meadowbrook Village housing complex, was only 200 yards from their homes when the fire department from Rochester arrived and was serious enough that aid from another town had to be called in. It took the tower way over in Strafford to spot the fire. This fire had all of the dangers of spreading to and through the Meadowbrook Housing areas and danger was averted by the good work of the Blue Job Mountain Fire Watch Tower. The lookout at the tower and the fire watch system at Blue Job deserves our recognition for a job well done and I thought you should know about it. Thank you.

SENATOR BARNES (Rule #44): As most of you know, I am one of the sponsors of this bill. I believe in it and I also believe that the folks that have preceded me have made good points. I wish I could speak for the organization, I can't, I can only speak for myself. When I started, I am happy that I couldn't talk until the two of you got through because I would like to add to that and to what Senator Baldizar has said. We all know, and I think that everyone in this room at one time or another has been accused or innuendos have been made somewhere about us of other things that we stand for. Seeing that we have four people at the press table, I would just like to end by saying that I hope that you got every word of what Senator Baldizar said and I would just love to read it in each of your newspapers tomorrow. I think that it is worthy of being published on the front page. Thank you.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to Third Reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Tuesday, May 18, at 1:00 p.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 108-LOCAL, an act permitting counties to establish special equipment accounts for Registers of Deeds.

HB 113, an act expanding the financial authority of towns.

HB 140-FN-A, an act establishing a task force to study economic incentives and technological opportunities to assist state and local governments and business and industry to increase waste reduction and recycling.

HB 171-FN, an act changing procedures applicable to the Board of Registration in Medicine, and clarifying the provisions providing immunity from civil action to members of the Board of Chiropractic Examiners, Board of Registration in Medicine, and Board of Examiners of Psychology and Mental Health Practice, and good faith immunity to others who provide information to these boards.

HB 176-FN, an act establishing a procedure to test and quarantine equines imported from CEM countries.

HB 177-FN-LOCAL, an act establishing procedures for the removal of town clerks, tax collectors, and treasurers.

HB 227, an act relative to enforcement of parking violations.

HB 232, an act permitting the checking of traps at night subject to certain restrictions.

HB 233, an act relative to the equipment challenge grant program.

HB 244, an act relative to parking violation enforcement.

HB 278, an act relative to joint building committees for the construction of schoolhouses.

HB 303, an act changing the manner in which a person accepts nomination for office by write-in vote.

HB 328, an act requiring the refund of mortgage loan application fees and costs when a loan application is not processed due to the financial failure of the mortgage lender.

HB 330, an act relative to the authority of municipalities to designate certain roads as Class V highways.

HB 356-LOCAL, an act relative to legal disputes between the state and political subdivisions of the state regarding Article 28-a violations.

HB 393, an act relative to duties of supervisors of a checklist.

HB 490, an act permitting a registered voter who is registered as undeclared to vote in a primary election and on the day of the primary election register again as undeclared.

HB 596-FN, an act to provide rulemaking notice to municipalities and legislators.

HB 665-FN-A, an act establishing a committee to study the effects and feasibility of a statewide property tax to fund education.

HB 673-FN, an act relative to accounting requirements for moneys received by the State Treasurer.

HB 689-FN-LOCAL, an act relative to funds for students residing in unorganized places.

HB 692, an act transferring rulemaking authority from the Current Use Board to the Chairman of the Current Use Board, who will implement the recommendations of the board.

Senator Delahunty moved that the Senate be in recess until Tuesday, May 18, at 1:00 p.m. for the sole purpose of receiving House Messages and Enrolled Bill Reports.

Adopted.

Recess.

Out of Recess.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendments, in the passage of which amendments the House of Representatives asks the concurrence of the Senate:

SB 85, relative to the composition of the Wetlands Board.

SENATE NONCONCURS WITH HOUSE AMENDMENT

SB 85, relative to the composition of the Wetlands Board.
Senator Russman moved nonconcurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 22, relative to foreclosure notification waiver.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 22, relative to foreclosure notification waiver.
Senator Fraser moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 35-FN-A, relative to a fund for organ transplantation and transferring responsibility from Vocational Rehabilitation to the Division of Human Services and making an appropriation therefor.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 35-FN-A, relative to a fund for organ transplantation and transferring responsibility from Vocational Rehabilitation to the Division of Human Services and making an appropriation therefor.

Senator J. King moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendments, in the passage of which amendments the House of Representatives asks the concurrence of the Senate:

SB 95, revising, conditioning, or repealing the rulemaking authority of the State Board of Education.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 95, revising, conditioning, or repealing the rulemaking authority of the State Board of Education.

Senator Disnard moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Disnard, Hollingworth, McLane.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendments, in the passage of which amendments the House of Representatives asks the concurrence of the Senate:

SB 87, relative to capital investment, venture capital, capital access and the business finance authority and capital formation; and relative to ambulatory care clinics.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 87, relative to capital investment, venture capital, capital access and the business finance authority and capital formation; and relative to ambulatory care clinics.

Senator W. King moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: W. King, Fraser, Shaheen.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 65, requiring health care providers to disclose an ownership interest in any entity to which they refer patients.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 65, requiring health care providers to disclose an ownership interest in any entity to which they refer patients.

Senator J. King moved non concurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: J. King, Colantuono, McLane.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 26, relative to contracts between public adjusters and insureds.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 26, relative to contracts between public adjusters and insureds.

Senator Podles moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Podles, Fraser, Cohen.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 7, changing the bonding requirement for mortgage brokers.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 7, changing the bonding requirement for mortgage brokers.

Senator Fraser moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Fraser, Disnard, Lamirande.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 6, permitting the Bank Commissioner to regulate municipal development authorities and organizations and not-for-profit development organizations which become small business lenders through certain federal and state loan programs.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 6, permitting the Bank Commissioner to regulate municipal development authorities and organizations and not-for-profit development organizations which become small business lenders through certain federal and state loan programs.

Senator Fraser moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Fraser, Disnard, Barnes.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 245, changing the penalties for driving while intoxicated or under the influence of drugs.

SENATE NONCONCURS

SB 245, changing the penalties for driving while intoxicated or under the influence of drugs.

Senator MacDonald moved nonconcurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passagde of which amendment the House of Representatives asks the concurrence of the Senate:

SB 141-FN-A, removing the drug and alcohol treatment center, boot camp and a halfway house from the Laconia development services building and selecting a consultant and establishing a committee to study the corrections system and making an appropriation therefor.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 141-FN-A, removing the drug and alcohol treatment center, boot camp and a halfway house from the Laconia development services building and selecting a consultant and establishing a committee to study the corrections system and making an appropriation therefor.

Senator J. King moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: J. King, Fraser, Baldizar.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 182-FN-LOCAL, requiring tax collectors to mail a duplicate copy of a property tax bill to a lienholder, upon written request of the lienholder.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 182-FN-LOCAL, requiring tax collectors to mail a duplicate copy of a property tax bill to a lienholder, upon written request of the lienholder.

Senator Currier moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Currier, Fraser, J. King.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 191-FN, relative to the New Hampshire Real Estate Practice Act.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 191-FN, relative to the New Hampshire Real Estate Practice Act.

Senator Currier moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Currier, Lovejoy, J. King.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 200-FN-LOCAL, relative to the payment of medical benefits to certain Group II retirement system members.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 200-FN-LOCAL, relative to the payment of medical benefits to certain Group II retirement system members.

Senator Delahunty moved nonconcurrence and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Delahunty, Blaisdell, Shaheen.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 220-FN-LOCAL, relative to criminal history checks for school personnel and applicants.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 220-FN-LOCAL, relative to criminal history checks for school personnel and applicants.

Senator Podles moved nonconcurrence and requested a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Podles, J. King, Colantuono.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 239-FN-LOCAL, relative to the Public Utilities Commission.

SENATE NONCONCURS AND REQUEST A COMMITTEE OF CONFERENCE

SB 239-FN-LOCAL, relative to the Public Utilities Commission.

Senator Currier moved nonconcurrence and request a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Currier, J. King, Bourque.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled Bill sent down from the Senate:

HB 503, relative to past legislative enactments authorizing water use in New Hampshire and giving official notice to all water users that the Division of Water Resources will prepare a list of all water users.
and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

Representatives: R. LaFlam, J. Conroy, D. Merritt, H. Dickinson.

SENATE ACCEDES TO HOUSE REQUEST

HB 503, relative to past legislative enactments authorizing water use in New Hampshire and giving official notice to all water users that the Division of Water Resources will prepare a list of all water users.

Senator Russman moved to accede to request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Russman, W. King, Pignatelli.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled Bill sent down from the Senate:

HB 469-A, allowing the State Treasurer to issue bonds to pay for debt issuance costs.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

Representatives: J. Sytek, G. Gosselin, R. Langer, C. Ferguson.

SENATE ACCEDES TO HOUSE REQUEST

HB 469-A, allowing the State Treasurer to issue bonds to pay for debt issuance costs.

Senator Fraser moved to accede to request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Fraser, Barnes, Baldizar.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendments to the following entitled Bill sent down from the Senate:

HB 456-FN, modifying the bail statutes relative to persons arrested for violating certain protective orders.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

Representatives: D. L. Lozeau, R. Campbell, R. Russell, D. Gorman.

SENATE ACCEDES TO HOUSE REQUEST

HB 456-FN, modifying the bail statutes relative to persons arrested for violating certain protective orders.

Senator Podles moved to accede to request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Podles, Baldizar, Cohen.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendments to the following entitled Bill sent down from the Senate:

HB 454-FN, removing the requirement that courts approve temporary transfers of county prisoners.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

Representatives: F. Andrews, V. Clark, W. Knowles, D. Sytek.

SENATE ACCEDES TO HOUSE REQUEST

HB 454-FN, removing the requirement that courts approve temporary transfers of county prisoners.

Senator Podles moved to accede to request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Podles, Colantuono, Baldizar.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendments to the following entitled Bill sent down from the Senate:

HB 399, removing a certain portion of the blue laws regarding Sunday business activity and relative to certain police regulations.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

Representatives: J. Hunt, P. Simon, P. Drolet, S. Loder.

SENATE ACCEDES TO HOUSE REQUEST

HB 399, removing a certain portion of the blue laws regarding Sunday business activity and relative to certain police regulations.

Senator Podles moved to accede to request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Podles, Hollingworth, Colantuono.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendments to the following entitled Bill sent down from the Senate:

HB 297, establishing a committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on the state and to study certain incentives and propose a state policy regarding the use of alternative transportation fuel vehicles.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

Representatives: R. Daigle, R. Lee, B. Hall, D. Scanlan.

SENATE ACCEDES TO HOUSE REQUEST

HB 297, establishing a committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on the state and to study certain incentives and propose a state policy regarding the use of alternative transportation fuel vehicles.

Senator Russman moved to accede to request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Russman, W. King, MacDonald.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendments to the following entitled Bill sent down from the Senate:

HB 131, repealing a penalty provision regarding anabolic steroids.
and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

Representatives: D. Sytek, L. Apple, S. Hurst, K. Toomey.

SENATE ACCEDES TO HOUSE REQUEST

HB 131, repealing a penalty provision regarding anabolic steroids.

Senator Podles moved to accede to request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Podles, Colantuono, Cohen.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled Bill sent down from the Senate:

HB 268, increasing the penalty for certain subsequent offenses of indecent exposure.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

Representatives: D. L. Lozeau, R. Campbell, W. Knowles, K. Toomey.

SENATE ACCEDES TO HOUSE REQUEST

HB 268, increasing the penalty for certain subsequent offenses of indecent exposure.

Senator Podles moved to accede to request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

Senators: Podles, Shaheen, Baldizar.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 216, allowing owners of homes damaged by disaster to place temporary manufactured housing on the lot while the home is being rebuilt.

HB 332, authorizing municipalities to create revolving funds to support public recreation parks.

HB 407, making technical changes to the laws governing the courts.

HB 565, prohibiting hazing.

HB 671-FN, increasing the term of a resident's license to carry loaded pistols and revolvers.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bill sent down from the Senate:

SB 93-FN-A, relative to the National Science Foundation's statewide systemic initiatives program and making an appropriation therefor.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 137-FN-Local, requiring municipalities to pay back to the state 50 percent of the moneys given to the municipalities as school building aid if the municipalities decide to use the buildings for purposes other than educational purposes.

SB 156-FN-A, relative to the Portsmouth Naval Shipyard and making an appropriation therefor.

SB 166, requiring the Department of Transportation to continue with the Hillsborough reconstruction bypass project.

SB 181-FN, abolishing the New Hampshire Retirement System Special Reserve Account.

INTRODUCTION OF HOUSE BILLS

Senator Russman offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bill numbered 653 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committee.

Adopted.

First and Second Reading and Referral

HB 653, relative to the practice of optometry. Public Institutions, Health and Human Services committee.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

HB 565, prohibiting hazing.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

HB 166, relative to felons who own or possess dangerous weapons.

HB 313, relative to mortgage insurance.

HB 340, relative to technical changes in the small employer insurance law.

HB 434, relative to the assessment of the oil import license fee.

HB 600, relative to candidates who seek nomination by nomination papers.

SB 48, relative to the children's trust fund.

SB 105, relative to the rulemaking authority of commissioners of state departments.

Senator Currier moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

SB 55, relative to accident and health insurance and health maintenance organizations.

SB 186, requiring the Division of Water Supply and Pollution Control to set standards of design and construction for innovative or alternative waste treatment systems.

Senator Currier moved adoption.

Adopted.

RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Tuesday, May 18, 1993 at 1:00 p.m.

Adopted.

LATE SESSION

Senator Disnard moved that the business of the day being completed that the Senate now adjourn until Tuesday, May 18, 1993 at 1:00 p.m.

Adopted.

Adjournment.

May 18, 1993

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

Whatever you decide about term limits, remember this: God has already limited your term and my term and the term of every person who voted for you and every person who didn't. We are all temporary. Great and limitless God, You have set boundaries for us and limited our terms. Remind each of us that any influence and any power that we have does not belong to us but is rather on loan from You, is to be used as You wish and that You will be taking it back when our term expires and asking us how well we did. Amen

Senator Fraser led the Pledge of Allegiance.

INTRODUCTIONS

NOTICE OF RECONSIDERATION

Senator Hollingworth served notice of reconsideration on HB 665-FN-A an act establishing a committee to study the effects and feasibility of a statewide property tax to fund education.

NOTICE OF RECONSIDERATION

Senator Shaheen served notice of reconsideration on HB 182-FN an act requiring the members of executive branch boards and commissions to file financial disclosure statements.

COMMITTEE REPORTS

HB 390, an act to limit the terms of office for the members of the United States Congress from New Hampshire. Judiciary committee. Majority Report: Ought to Pass with Amendment. Senator Cohen for the committee. Minority Report: Ought to Pass. Senator Podles for the committee.

2640B

Amendment to HB 390

Amend the title of the bill by replacing it with the following:

AN ACT
to limit the terms of office for the members of the
United States Congress from New Hampshire,
and relative to eliminating straight
ticket voting on the ballot.

Amend the bill by replacing section 6 with the following:

6 Removing Reference to Circle on Ballot. Amend RSA 656:11 to read as follows:

656:11 Party Emblem. Above [each circle] ***the name of the political party*** shall be placed an emblem designating or distinguishing the political party assigned to that column. The emblem or device shall be select-

ed by the secretary of state for each political party represented upon the ballot and shall be different for each of such parties and may be any appropriate symbol; but neither the coat of arms nor the seal of any state, nor of the United States, nor the national flag, nor any religious emblem or symbol, nor the portrait of any person, nor the representation of a coin nor of the currency of the United States shall be chosen as a distinguishing emblem.

7 Removing Reference to Circle on Ballot. Amend RSA 656:12 to read as follows:

656:12 Write-In Blanks. In the right-hand column of each state general election ballot, there shall be no [circle or] emblem but there shall be left as many blank lines without squares at the end thereof as there are persons to be elected to each office.

8 Removing Instructions to Voters on Ballot for Straight Ticket Voting. Amend RSA 659:18 to read as follows:

659:18 Instructions for [Voters; How to Mark the Ballot] ***Write-In Voting.***

[I. In a state general election, the following instructions to voters for straight ticket voting shall be printed on the ballot: Make a cross (X) within the circle of the political party of your choice if you wish to vote for all candidates running in that party column. If you vote a straight ticket, but wish to vote for one or more individual candidates of a different party, you may do so, and your vote for an individual candidate will override the straight party vote for that office. However, if you vote for one candidate of a different party for an office where more than one candidate is to be elected, be sure to vote individually for all candidates of your choice for that office, because your straight ticket vote will not be counted for that office.

II. In a state general election, the following instructions to voters for split ticket voting shall be printed on the ballot: If you do not wish to vote in any party circle, make crosses (X) in the squares opposite the names of the candidates for whom you wish to vote.

III.] In a state general election, the following instructions to voters for write-in voting shall be printed on the ballot: If you wish to vote for candidates whose names are not printed on the ballot, write in the names on the appropriate lines in the blank column at the right.

9 Contingency. If on January 1, 2000, as certified by the secretary of state, the United States Congress has either passed campaign finance reform legislation which is in effect on that date, or has adopted a revolving chairmanship program to replace its seniority system which has been instituted on that date, then sections 1-3 and section 5 of this act shall be null and void and shall have no force or effect as of January 1, 2000.

10 Repeal. The following are repealed:

I. RSA 656:10, relative to the straight ticket party circle.

II. RSA 659:66, relative to counting straight party votes.

11 Effective Date.

I. Sections 1-5 and section 9 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill limits the number of terms which a United States senator and a United States representative may serve. Beginning on January 1, 1994, no United States senator from New Hampshire shall serve more than 2 consecutive terms in the United States Senate, and no United States representative from New Hampshire shall serve more than 4 consecutive terms in the United States House of Representatives.

The provisions of the bill shall be suspended on January 1, 2000, if the secretary of state certifies that at least half of the members of the United States House of Representatives and at least half of the members of the United States Senate have not been elected from states which limit the terms of office for their members of Congress.

The bill also contains a contingency provision which nullifies the provisions of the bill on January 1, 2000, if, as of that date, the secretary of state certifies that the United States Congress has either passed and adopted campaign finance reform legislation, or has adopted a revolving chairmanship program to replace its seniority system.

The bill also eliminates the provision for straight ticket voting in state primary and general elections.

SENATOR COHEN: The Judiciary committee heard testimony from both sides on this issue, each had excellent points. But clearly what people wanted most was to keep members of Congress and the members of the United States Senate responsive to the people back home and not to the special interest. That message was not lost on the committee members. The people want meaningful election reform. The amendment to this bill achieves that goal. As we saw in the last election the voters called loud and clear for sweeping electoral reform and they were not to be satisfied with piecemeal symbolic efforts. By itself a term limits bill is only one small step which is just part of the picture. We have all heard from our constituents. I heard from constituents as late as 10:15 last night. The constituents are supportive of this change and they won't be satisfied with just symbolic efforts. They want real comprehensive change in Washington. That change will only come when we reform the way that campaigns are financed and when we break up the stranglehold of the seniority system. This package accomplishes that. It is stronger than mere term limits which by themselves do not yield the real comprehensive change that our constituents want. One small group within the term limits movement has taken to calling these amendments, "killer amendments". But whenever I explain these amendments to constituents who favor term limits, in each and every case, the people agree, these amendments strengthen the goal of electoral reform. There is real campaign finance reform which has been proposed by the President and they are very specific measures. This is from the White House. The campaign finance reform they are talking about limits campaign spending, restricts the role of pac's and lobbyist, opens the airways to all candidates and makes the lobbyist pay, not the American people; and bans the use of soft money in federal elections. This is meaningful campaign finance reform. However, the Washington based secretive opponents of these bills are in fact opponents of real change. They're instead for simple, meaningless slogans instead of standing up for sorely needed campaigning finance reform or sending a message to Washington to break up the power of the incumbency. The straight ticket amendment is an important part of our comprehensive effort to improve the election process, it too has the strong support of my constituents. It is a bipartisan initiative and it is supported by many House Republicans as well as by the Union Leader, the conservative newspaper, the Fosters Daily Democrat as well as the Concord Monitor. The Secretary of State strongly favors a straight ticket amendment. The reason is that thousands of ballots every year are fouled up by conflicting votes and various interpretations by moderators. This is sorely needed. The bottom line is, that whenever I explain these amendments to constituents who favor HB 390 the term limits bills, every single one agrees that they significantly strengthen the bill. With the amendments

we are sending the message that the people of New Hampshire want us to send, that we need change and our members of Congress and the United States Senate must work for us. The committee urges a vote of ought to pass on the bill with amendments.

SENATOR BARNES: Senator Cohen, am I correct in remembering that this straight ticket voting was a bill in the House and that it was re-referred for study this summer?

SENATOR COHEN: You are correct; however, this was supported by the majority of the committee. As you may remember, the House leadership had some involvement in how that change occurred, that was about to pass. The majority of the House supports this.

SENATOR BARNES: As I am getting along in years my memory clouds up a little bit, you will have to forgive me, Senator, but I lost you on the second part of your answer. Your first part of your answer was that it was a bill and it went through the House and it had hearings on it. It had public hearings on it, it had the constituents calling in to the Representatives on it, but it was re-referred, yes or no?

SENATOR COHEN: Yes.

SENATOR BARNES: Thank you very much, Senator.

SENATOR COHEN: I did also want to further, in answer to your question, mention that the local New Hampshire Term Limits Citizens for Political Reform has said as opposed to the secretive Washington based group that opposes the amendments, they have said that our members are not opposed to the content of these amendments.

SENATOR PODLES: I would like to move ought to pass and I would like to speak to that motion. Over 75 percent of the people in New Hampshire want the federal term limits bill to pass and they want it passed without amendments. The amendments muddy the waters and should be voted down. They are not germane and they have nothing to do with the bill. And the best interest of our country must be put ahead of partisan politics. There is no definition of what constitutes campaign financing reports, which is one of the amendments and also the straight ticket legislation was re-referred in the House, so those two are really very controversial. Fifteen states across the country have passed federal term limits by referendum. New Hampshire will be the first legislative state to respond to the wishes of the people. It sends a strong message to the voters that we are listening to them. Members and friends of the United We Stand America of the greater Nashua area have sent the Senate Judiciary committee 624 petitions in support of HB 390 and they are from the Nashua area. The testimony in committee strongly favored the bill without the amendments. In one day alone I received 85 letters in support of HB 390. To allow turnover to occur by natural process, i.e. voting as has been suggested, is just not realistic. You just have to look at the disproportionate amounts of money that incumbents are able to raise and spend compared to their challengers and you begin to realize the excessive concentration of power in the hands of a small number of people. Their primary skill is limited to getting re-elected and finding new and more expensive perks. Term limits is by no means a magic solution, but it is necessary. Because without it, serious campaign finance and other such reforms will never be realized. I urge support for the bill without amendments.

SENATOR MCLANE: Senator Podles, I doubt if you appreciate anymore than I do being called deadwood. We have been around here for a long time and I have found that the letters that I have received make me resent the ugly tone that some of us who have been here for a while are deadwood that they are stuck with. I have done an analysis of the letters that have come in and have discovered that many of them, particularly from businesses in Manchester, have the same typewriter, the same machine and not a single one of them is over four lines long. It makes me think that a lot of money has been spent to produce the sort of telephone calls that all of us have had. I don't know who to feel sorry for, ourselves or our spouses. But I will tell you that my husband sent me off this morning after having gotten up about 17 times while I was not home last night with not a very good mood about term limits. It seems to me and I have been asking the people who called, who asked them to call? And I guess my final question would be, most of them said, "Chuck Douglas". Chuck Douglas spent over $7,000 trying to defeat me by supporting a libertarian and I think of all the people that ought to know that term limits do work when the people get together and decide and that you don't need term limits in order to eliminate some deadwood. I would suggest that Mr. Douglas would know that.

SENATOR HOLLINGWORTH: I just want to point out because Senator Podles said that there was testimony in opposition to the bill and I sit on that committee. I have checked my notes and I see absolutely no testimony that said anything in opposition to the amendments during the testimony on that bill. I also would like to state that I have made a point of talking to every single individual who has called me on the phone. I think that it is a marvelous opportunity for me to talk to constituents who have never called me before. So I think that it is a real plus for me. When I do, I tell them what the amendments are and the requirement to do away with the straight ticket, and every single individual has said that they support it and that they think that is an excellent amendment. I went back and checked the newspapers, and the House and the press overwhelmingly supported abolishing the straight ticket. I have a very conservative newspaper in my area and one of the things that he said was, "straight ticket voting might not rank up there with campaign finance or voter registration but it is part of what political reform is all about". Clearly the people of this country, of this state, do believe that steps have to be taken to reform what is basically a sound political structure. They went on to say that they felt that the term limitations were for the brain dead. And another newspaperman, Finnegan from the Manchester Union Leader said, "it was like the Houses rejection of straight tickets was like rejecting apple pie". There is also a statement here for the informed voter. Then there is a piece in here again by Breen from the Fosters Daily and he talked about how important it is that this type of legislation pass. So it is on and on and it also clearly states that a candidate such as a libertarian and the independents would stand a better chance of being elected. We all well know that in the process that our duty when we get a piece of legislation is to look at it and to try to make the best come out of that piece of legislation. We need to try to promote good government. I think that today is our opportunity to do that, to make the Senate's viewpoint that we believe that good government and abolishment of the straight ticket, campaign reform and revolving chairmanships in Congress are the appropriate thing to do. I see no better bill that those statements should be attached to than to this bill. Again, I

would like to say that every single one of my constituents that talked to me said that they supported the amendments and had no opposition to them. I would like to ask for your support on this piece of legislation.

SENATOR SHAHEEN: I would also like to add my voice to the discussion that says that what we are doing with the amendments to HB 390 is not an effort to kill term limits. I think that everybody in this body understands that the will of the electorate in New Hampshire is that we pass term limits. What it has become is an argument about whether we are going to eliminate straight ticket voting. Those very people who have said that we need term limits because we need government reform and we need a more open process and we need to tell people what is really going on in government, are the same people who haven't been honest and open about the process on this term limits bill. They are the same people who haven't told the people the real truth about these amendments and who haven't said that what the amendments are going to do is to make this a better electoral reform package. Democracy only works when we have informed voters. That, ultimately, is going to be the real solution; not to just term limits or to the elimination of straight ticket voting, but to making government work better for all of the people. And until those organizations who are talking about government reform are willing to tell all of these voters up here the whole story and not just part of it, we are not going to have the kind of government that we want to have in this country.

SENATOR BARNES: I rise in support of Senator Podles' motion of ought to pass without the amendments. As most of you can see by my waistline that I haven't passed up many pieces of apple pie that Senator Hollingworth refers to in one of the articles in the newspaper. I am proud to say that the apple pie happens to be delicious; however, as most of you know I am one of the sponsors of this bill. You say, how did a nice guy like you, Jack, get involved with this? Well it started back about June 25 of last year when I went to the Secretary of State's Office and I signed my name to papers that I wanted to run for Senate District 17. As I made the trips into the 12 communities that comprised District 17 there were two main questions asked of me, "if we vote for you what are you going to do about getting us back to work"? My comment was, "that I will do my best, I will do everything in my power, I will work on legislation in Concord to see what we can do about that terrible situation". The second most asked question, believe it or not, wasn't about how I felt on abortion, but it was how I felt about term limits and how are we going to take care of the people down in Washington? So you can thank the folks that asked me that question, because I guess that they are the ones that liked my answer because they voted for me and sent me up here. So if you want to look and say how come he is here, that I think, is one of the reasons why I was elected. I really don't think that the people in District 17 from Danville all the way up to the lovely Loudon, are much different ,if any different ,than the good folks over on the seacoast or the good folks over on the Vermont, New York border, I think that they are all the same. This has been a real interesting experience for me as a first year Senator, this particular piece of legislation. Number one, it certainly has taken all of the post offices in New Hampshire out of the red. We have done one thing, we have sold a heck of a lot of postage stamps. For that, I think that they are thankful. Back in January of this year, the first press conference that I was involved with on this was called, and to my right stood Representative, Congressman Dick Swett; and to my left was Representative, Congressman Zeliff and guess what? They were both saying

the same thing in support of the bill that I am proud to be a co sponsor of. A little later on it got real interesting. I had a chance to sit down and have lunch with another group of people with Ralph Nader, an interesting individual if you haven't had a chance to sit down and go one on one with him. He was up here to help us with the term limit bill. Low and behold I look up at the hearing and here comes Governor Jerry Brown from California. And I am proud to say that I shook his hand twice and put my arm around him for his comments on term limits. Just to think that he flew all the way in from California to help Jack and the people from New Hampshire out. I was impressed. I think that I have to bring up something else also. Before the outsiders that I have heard referred to in the paper and from here on the floor of the Senate, got involved with term limits, I signed onto this piece of legislation before I knew that there were people in Washington that were going to get involved with this. I did it because I feel and I heard that it was the right thing to do. It had nothing to do with those people out there that have aggravated some members of this Senate. I am sorry if those folks have aggravated people. I think that I made that clear last Tuesday to Senator Baldizar and the beating that she had taken down there. And I know that she was in favor of this because I know that she was with Congressman Swett before he came onto the steps of the State House and they were talking about it, I am sure. So, I have heard from two or three people over there to my left that this amendment on the straight ticket is a great idea. Some of the conservatives as well as the liberal newspapers in this state have backed it to the hilt. Well as I have said, I have eaten some of that apple pie, maybe more than I should have; however, it was a bill across the hall, they referred it, and I think it should stay over across the hall until they work on it this summer. Don't muddy the waters. Keep it on its own and let it stand on its own merit. I will probably will go to the committee meeting and I will probably have some nice things to say about it. It looks like I am going to have some questions asked.

SENATOR SHAHEEN: Senator Barnes, isn't it true that this is the bill that originally came out of committee in the House as ought to pass and that the House leadership then took people in the back room and twisted a lot of arms and when it came back out of committee again the vote had changed on it?

SENATOR BARNES: Senator, all that I can tell you is that I am no longer a member of the House and Harold Burns does not call me and confer with me. I only know what I have read in the newspaper, what has been insinuated in the newspaper, so I couldn't answer that question with a yes or a no, because I don't know.

SENATOR COHEN: Senator Barnes, you mentioned how this bill has helped the United States Post Offices in the state of New Hampshire by selling a lot of stamps. When I called the term limits people whereever they are, the 1-800 number, I asked where they were located and they said, "we are not allowed to tell you". Are you familiar with where this 800 number is and who paid for all of these stamps? There are certainly some powerful special interest who are really behind this?

SENATOR BARNES: Senator Cohen, if I knew I would certainly put that out here on the floor of the Senate. I would have done it last Tuesday when we had the discussion about Senator Baldizar. I have no idea who paid for the 800 number. I know that no money came out of my pocket for it. And I wasn't asked for any money. They didn't ask me to introduce

this bill back in January, they weren't around. They were around, but they weren't visible as I tried to make clear in my earlier testimony. No, I don't know where the 800 number is and, no, I don't know where the money came from for it.

SENATOR COHEN: Senator Barnes, I wonder if you're aware of the opinion of the Supreme Court of the United States which says, "no authority has been offered in support of this novel proposition that any state has the power to impose qualifications and that when a proposal is obviously unconstitutional, omitting a vote on a matter will lead only to creation of false hope, leading to eventual anger and disillusionment", are you aware of that opinion of the Supreme Court?

SENATOR BARNES: That must be one of the opinions that I haven't read yet.

SENATOR COHEN: Thank you.

SENATOR COLANTUONO: I rise as the other member of the minority to support the minority report of ought to pass together with Senator Podles. I rise in opposition of the majority report of ought to pass with amendment because I feel strongly that the amendments are in fact an attempt to kill the bill, to muddy the waters and to put forward nongermane matters that don't belong on this bill and don't have anything to do with term limits. I heard Senator Hollingworth say that she checked her notes carefully and that there was no opposition to the amendments in the hearing. I will agree with that. There was no opposition to the amendments because those amendments were not before the committee. They were not discussed at the hearing, they were not brought up, they were still a germ in someone's mind up at the third floor office. These amendments came through at an executive session as part of an attempt to, in my opinion, to kill the bill. I heard Senator McLane and Senator Hollingworth argue that the term limit bill is a bad idea and I hope that they make a motion to make the bill inexpedient if they think that it is a bad idea and vote no rather than vote for the bill with the amendments. I heard some pretty tough words by some of the opponents to this bill regarding their own constituents who probably for the first time in their lives have contacted a Senator or some other elected official who represents them. I think that there are some insinuations made that these people were not on the up and up. They didn't understand the issue. They were improperly informed and they were being mislead by the so-called powerful interest out of Washington. Frankly, I was happy to see the opponents of this bill attack their own constituents like that because that kind of thing is going to come back next November, we are going to hear those words again. But the people of this state in two different recent polls have said that they are, by margins of three and four to one, in favor of a term limit bill, because they understand that Congress as it is presently constituted is a failed institution precisely because of the fact that there are 20, 30 and 40 year veterans down there who do not have the best interest of the people at heart and this is why 15 states, the voters in 15 states, have already voted for term limit bills last November in states where it was able to be put on the ballot. Those states are Washington, Oregon, California, Montana, Wyoming, Colorado, North Dakota, South Dakota, Nevada, Arkansas, Montana, Ohio, Mississippi, Florida. New Hampshire has the opportunity to make history as being the first state which by its legislative vote has adopted term limits. I believe that if we do the right thing here today and adopt this bill, we will ignite a fire storm amongst states which have to go the legislative route like we do

and you will see term limit bills pass within the next several years in almost every state in the union. And as in so many other things, New Hampshire has the opportunity to be first and to be right, and this is another one. I urge my colleagues to vote down the amendments and to vote for the bill without any amendments. I also think that it is important to talk briefly about the amendments because that is what the first vote is going to be on. If you haven't had a chance to read the amendments I hope that you do before you vote on them. On page 15, paragraph nine, is the contingency which contains two of the amendments. What that says, and I will just read it, "if on January 1, 2000, as certified by the Secretary of State, the United States Congress has either passed and adopted campaign finance reform legislation", which is in effect on that date, "or has adopted a revolving chairmanship program to replace its seniority system", which has been instituted on that date. Then section one through three and section five of, "this act shall be null and void and shall have no force or effect as of January 1, 2000". Now first of all you notice that they haven't said that, excuse me, what that does is that if either one of those contingencies pass, the term limit dies, we no longer have term limits. So it is clear that the people who support the amendments do not want term limits. It is not a situation where there is an all encompassing reform package which includes doing away with seniority and includes campaign financing reform and includes term limits. It is either or. But my biggest problem with it is that there is absolutely no definition of campaign finance reform legislation. Congress could pass a law next year which simply lowers the amount of money that a person can give to a candidate, that is campaign finance reform legislation, and then our term limits bill would be nullified. The issue on revolving chairmanships to replace the seniority system is another problem. If, as I expect will happen, many states between now and the year 2000 will pass term limits. The seniority system then becomes more important because you are going to want the more senior members, under term limits, to be Chairmen and Chairwomen of committees. You are not going to want a first termer in there, you are going to want the third and fourth termers in there. So I think that if you sit down and think about what those contingencies do, what those amendments mean, they are obviously not well thought out. They obviously are not serious attempts to legislate and they are clearly just simple attempts to kill this bill. Now with regard to straight ticket voting, I agree with what Senator Barnes said. That piece has never had a hearing in this body, it has never had any public input; the bill was put in by the House Democratic leadership for purely partisan reasons, and it is in referral. It failed to be passed, Senator Cohen. The House isn't in favor of it. It wasn't passed. This is a very cynical attempt to turn a bipartisan issue that a coalition wants into a very partisan bill and I hope that you would vote against the amendment and for the straight bill. Mr. President, I also ask for a roll call vote when it is time to vote on the amendment.

SENATOR W. KING: First, let me say this in response to what Senator Colantuono said before, I have heard no one in this body, whether for this bill with the amendments or for strictly on an ought to pass motion, say anything pejorative about any constituents that called. In fact, I distinctly heard a number of people say that they took the time to discuss the issue with their constituents and having taken that time what they found out was that the constituents were mislead by the national organizations that were pumping millions of dollars into this discussion, and that when they discussed it with them the constituents were in fact in favor of the

amendments because they clearly turned what was a single issue bill into a major election reform piece of legislation. I am proud to support this as a major election reform legislation. I want to talk about what I think is the greatest offense in politics. It is not voting for or against a single position, it is hypocrisy. The hypocrisy of those who say that they want to open government up to the people. We want to know how the money is being spent. We want to know what it is being spent for. We want to know how people are going to vote on an issue. We want to know everything about the way government runs in Concord and in Washington. Then to turn around and refuse to devulge where their funds were coming from. To tell people outright lies on the telephone about where people stood on the issue. That is hypocrisy at its worst, and it is absolutely inexcusable. To be speaking about cleaning up government and then to reject the greatest opportunity that we have to clean up election laws in this state. To eliminate straight ticket voting. To say that in fact there will be revolving chairmanships in committees so that we don't have the good old boys and the good old girls controlling things in Washington. That would in fact bring new blood to the chairmanships of committees so that we don't have bills that die for lack of attention in Washington. To speak of those things and then to outright oppose doing something about them in this bill is hypocrisy at its worst. Yes, there are those of us who are uncomfortable with limiting terms and I will tell you why. Because we have faith in the people of the state of New Hampshire and we have faith in the people of the United States. If you need any more proof of the validity of our faith, you need only look as far as Chuck Douglas. Chuck Douglas did a lousy job as a Congressman and the people of the state of New Hampshire gave him a term limit without this law. This is not a partisan issue. This is an issue of good government, period. I am willing to live with term limits as long as it is part of a major election reform bill, and only if it is part of a major election reform bill, because I frankly don't think that term limits are going to do all that much. But if we put all of these things together in a package, perhaps. We are going to be able to begin to change the course of politics in New Hampshire and in the United States of America. I urge you to support this bill as amended.

SENATOR BARNES: Senator Wayne King, would you believe that parts of your talk I certainly agree with, and the one that I . . . now I said parts now, qualifying parts . . . I think your part about the misrepresentation of certain things is well said and I certainly agree with that part of your statement. I just wanted to go on record as stating that I agree with you on that part.

SENATOR SHAHEEN: Senator Barnes, I really want to clarify what happened in the House. Senator Colantuono has misrepresented what happened on the elimination of straight ticket voting in the House. Since you referred to it I thought that you would be amenable to a clarification.

SENATOR BARNES: I will attempt, but I can't promise you what is going to come out.

SENATOR SHAHEEN: I wanted to point out that Senator Colantuono said that this was a, "democratic leadership bill in the House", and in fact there were three sponsors of the elimination of straight ticket voting bill in the House. One of them is a Republican. That in the House committee that over half of the people who voted this bill ought to pass out of committee were Republicans. And then in fact, when this bill was first introduced in the 70's, both Congressman Cleveland and Congressman Wyman, two republicans, supported the bill.

SENATOR BARNES: Is that a question?

SENATOR SHAHEEN: Would you believe?

SENATOR BARNES: Oh, very good. I'll tell you what I can do with this, I would like to ask you a question so that I can answer your question, if I may? You mentioned one of the sponsors who was republican . . . . the question, Senator Shaheen, is that you are much more familiar with that bill obviously then I am, because you knew that there were three sponsors on there and you knew that there was one republican. And could you let this chamber know, I think that I know who one of the other people are on that, but can you tell us who the two democratic sponsors of that bill were?

SENATOR SHAHEEN: Well, I can tell you that one is Gary Gilmore who is the prime sponsor of the term limit bill.

SENATOR BARNES: I understand that, but can you tell me who the second one is?

SENATOR SHAHEEN: I don't know who the second one is.

SENATOR BARNES: Okay, what I am trying to do is to clarify what the problem was that Senator Colantuono said in saying that it was a democratic deal. My understanding, and I haven't seen the bill, but what I understand is that Rick Trombly was the chief sponsor of that bill. I might be incorrect on that.

SENATOR SHAHEEN: I am not sure, but he could be.

SENATOR BARNES: If he were, to answer your question, now I can get to your question because you brought in Senator Colantuono, I would assume that that is why Senator Colantuono said that it is a democratic bill because the head of the democratic minority over there, next door to us, is headed by Rick Trombly, so that is probably why he said what he said.

SENATOR SHAHEEN: But what you also can see that if there is a republican sponsor, that it is probably a bipartisan bill? And especially given that we had both Congressmen Cleveland and Wyman supporting the original legislation?

SENATOR BARNES: Those fellows are before my time, but if you say so, I will agree with you.

SENATOR SHAHEEN: You would agree that they are republicans?

SENATOR BARNES: Yes, I think I remember the 'r' beside their names. As I said earlier in my testimony, I will go to committee meetings over there if we can keep that bill over there where it belongs, over through that wall for the re-referral process.

SENATOR LOVEJOY: My thoughts on term limits are that we should somehow be able to make them retroactive. But let me say this if I may, I appreciate, I happen to appreciate hearing from my constituents. I got all of those letters and I have to answer them all, and I do. And I get all of those cards, and I answer them all, I do. But you know something? I appreciate that. Because they express to me their feelings. And after all that is what I am asking them to do. Tell me how you feel about an issue. Because when I come over here I'm certainly not all of a sudden, because I was elected, an expert on these things. I have to learn. And I learn from talking to the people, and I learn from hearing from the people. Now we can talk about organized mailing and organized campaigns to try to change minds. Well, that may go on and it probably does go on. But that

doesn't go on with the people, my friends that call me by name and I call them by name, and they say, "George, I fully support the term limit legislation" and I know them and I know that they are not set up by some unnamed source in some dark room somewhere. These are my friends. I go to Burger King and the guys down there, sorry about that Jack, I should explain that. Because you see, in Rochester, Burger King is kind of the annex of the city hall and we have a 30 or 40 or 50 guys that go there everyday, and ladies, and they talk about public affairs and we will consider MacDonald's if you will move up there, Jack. But when I go in there and they say, "George, we fully support the term limit legislation", then I believe them because they are my friends. When I go to the Shop and Save supermarket or when I walk my dog and this has happened on this legislation, people have said to me and I haven't had one of them, I have not had one that called me and said I want you to vote against term limits, not a one, they have all said the same voice. And it wasn't just an organization that said that, it was my friends, my people, and my constituents. So I listened to them, and I hope that they will continue to contact me on other issues. I think that in my short tenure here I have made it clear that I personally don't think that major changes should be made in legislation or in proposed legislation without benefit of public hearing. These amendments are major changes. In fact, you would question probably in another form, if they were germane at all to term limits. But what we do know and we can agree on is that they have not had a full public discussion within this Senate body. And not having a full public discussion, then we haven't got a will or a sense of the public on them. I would appreciate being able to vote strictly on the term limit question and so I am going to vote against the amendments so that I can vote for term limits. Thank you.

SENATOR HOLLINGWORTH: Senator Lovejoy, you obviously do what we heard you say, keeping your ears close to the ground listening to what your constituents say and with interest. I was wondering if you always listen to the polls so astutely as to how you come to the same conclusions on some of the other bills that come before us, such as choice, and sense overwhelmingly the population and the polls are clearly the other way. I was wondering how you adjust that?

SENATOR LOVEJOY: I would like to answer that question this way, Mr. President, that your question, Senator Hollingworth, is just about as germane to this issue as your amendments are to this term limit legislation.

SENATOR J. KING: I rise in support of the amendments. Political reform or whatever they want to call it. I don't understand because somebody wants to make an amendment or two to a bill that it makes them against the bill that they are amending. Since when does that happen? Many people think that the amendments are great, some of you don't, so you vote against them. If we win, it becomes part of the bill. So you either vote for it or against it. We are not voting against term limits, we are voting for it, but we want some other things to go with it. Let us take an example in the House. They had a bill in there or a constitutional resolution that said that the same thing would happen to the state of New Hampshire that is happening to the United States. This was never told to the people who called, they thought that it was happening in the state of New Hampshire too. It doesn't affect state people, state election officers. I was upset when both didn't pass. I thought that there was a little bit of 'I'll tell you what to do in your backyard, but don't tell me what to do in my front yard', I don't like that. I have no objections to these amend-

ments whatsoever. The whole bill, I think, doesn't go far enough. My feeling would be to re-refer the whole darn thing for the summer and then we can sit down and really get some good politically formed and financing and every other thing that you can think of and come out as a bipartisan thing. I will go along with the amendment and with the bill at the same time. Thank you.

SENATOR BLAISDELL: Mr. President, I guess I want to wear the hat of the Dean of the Senate right now if I might. I guess rather than sit here or stand here and speak after being on this Senate floor 23 years, maybe they should be retroactive. I don't know, Senator Lovejoy, but I thought that you liked me. I am concerned now by people in this chamber not answering questions of the other Senators. I think that that is Senatorial courtesy, and I mean no disrespect. But, Mr. President, I call the question. I am not going to speak on this now.

Senator Blaisdell moved the question.

Adopted.

Question is on the committee amendment.

A roll call was requested by Senator Blaisdell.

Seconded by Senator Barnes.

The following Senators voted Yes: Lamirande, W. King, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes, Russman, Delahunty.

Yeas: 12 - Nays: 11

Committee amendment is adopted.

Recess.

Out of recess.

SENATOR COLANTUONO: What I intend to do, Mr. President, because of the fact that the vote that we just took incorporated three separate amendments onto HB 390. I intend to offer three floor amendments for taking out in turn each of those amendments, so that this body can have an individual vote on each one of the amendments so that our constituents can know how we believe that each of those amendments should be treated in case any particular Senator may have a problem with any one of the amendments, notwithstanding their vote on the package as a whole. I would just like to state that what this amendment does is it strips out the piece regarding the straight ticket voting and it leaves in the contingency that was originally paragraph nine of the bill. I would like to add to the debate that we just had relative to the United States Term Limits, Inc., the political action committee that has been promoting this bill. That that is a federally registered political committee and all of its records are available from the Federal Election Commission. Anyone who wants to get any information about that can contact its director, Paul Jacobs, at 1-800-733-6440. The reason that telephone operators who answer the 800 number can't give you detailed financial information about the organization is not because they are prohibited to for some deep dark secret reason, it is just because they don't have the authority, they don't have the knowledge. But if you ask for Paul Jacobs, he will be happy to tell you that their money comes from everyday people who send

$5, $10, $20 and $25 donations across this country who believe in this issue. We have already debated the issue of the straight ticket voting sufficiently so I stand on my floor amendment. I urge those who do not want the straight ticket piece clouding up this issue to vote yes for this floor amendment. I would be happy to yield to any questions from any Senator.

Senator Colantuono offered a floor amendment.

2788B

Floor Amendment to HB 390

Amend the bill by replacing section 6 with the following:

6 Contingency. If on January 1, 2000, as certified by the secretary of state, the United States Congress has either passed campaign finance reform legislation which is in effect on that date, or has adopted a revolving chairmanship program to replace its seniority system which has been instituted on that date, then sections 1-3 and section 5 of this act shall be null and void and shall have no force or effect as of January 1, 2000.

7 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill limits the number of terms which a United States senator and a United States representative may serve. Beginning on January 1, 1994, no United States senator from New Hampshire shall serve more than 2 consecutive terms in the United States Senate, and no United States representative from New Hampshire shall serve more than 4 consecutive terms in the United States House of Representatives.

The provisions of the bill shall be suspended on January 1, 2000, if the secretary of state certifies that at least half of the members of the United States House of Representatives and at least half of the members of the United States Senate have not been elected from states which limit the terms of office for their members of Congress.

The bill also contains a contingency provision which nullifies the provisions of the bill on January 1, 2000, if, as of that date, the secretary of state certifies that the United States Congress has either passed and adopted campaign finance reform legislation, or has adopted a revolving chairmanship program to replace its seniority system.

SENATOR BALDIZAR: Senator Colantuono, as you were speaking about this amendment, you just talked about an 800 number and a place where people could go to get information. Where is this group getting their information so that they would be able to give out the correct information because obviously they haven't done that?

SENATOR COLANTUONO: Senator, I am not a member of the group and I don't know the answer to that question. But again, I will give you the number and you can speak to Mr. Jacobs and ask him that question directly.

SENATOR BALDIZAR: Are you aware . . . and this is the question that I wanted to ask you earlier when you refused to take questions. Are you aware that this group has been giving out misinformation and not the correct information?

SENATOR COLANTUONO: Again, I am not aware of whether they are giving out correct information or incorrect information. I am aware that they support a bill that I support and I would urge you to direct your complaints to Mr. Jacobs at this number.

Senator Blaisdell moved the question.

Adopted.

Question is on the floor amendment.

A roll call was requested by Senator Colantuono.

Seconded by Senator Blaisdell.

The following Senators voted Yes: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes, Russman, Delahunty.

The following Senators voted No: Lamirande, W. King, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

Yeas: 11 - Nays: 12

Floor amendment fails.

SENATOR COLANTUONO: I rise to offer another floor amendment. Thank you, Mr. President, as I said earlier I am intending to have a separate vote on each of the amendments. This amendment #2787 leaves in the straight ticket voting piece but it removes a piece concerning seniority. The contingency that will do away with the term limits if Congress has amended its seniority system to allow revolving chairmanships. If you support taking that contingency out of this bill, I would urge you to vote yes. I would ask for a roll call vote.

Senator Colantuono offered a floor amendment.

2787B

Floor Amendment to HB 390

Amend the title of the bill by replacing it with the following:

AN ACT

to limit the terms of office for the members of the United States Congress from New Hampshire, and relative to eliminating straight ticket voting on the ballot.

Amend the bill by replacing section 6 with the following:

6 Removing Reference to Circle on Ballot. Amend RSA 656:11 to read as follows:

656:11 Party Emblem. Above [each circle] ***the name of the political party*** shall be placed an emblem designating or distinguishing the political party assigned to that column. The emblem or device shall be selected by the secretary of state for each political party represented upon the ballot and shall be different for each of such parties and may be any appropriate symbol; but neither the coat of arms nor the seal of any state, nor of the United States, nor the national flag, nor any religious emblem or symbol, nor the portrait of any person, nor the representation of a coin nor of the currency of the United States shall be chosen as a distinguishing emblem.

7 Removing Reference to Circle on Ballot. Amend RSA 656:12 to read as follows:

656:12 Write-In Blanks. In the right-hand column of each state general election ballot, there shall be no [circle or] emblem but there shall be left as many blank lines without squares at the end thereof as there are persons to be elected to each office.

8 Removing Instructions to Voters on Ballot for Straight Ticket Voting. Amend RSA 659:18 to read as follows:

659:18 Instructions for [Voters; How to Mark the Ballot] ***Write-In Voting.***

[I. In a state general election, the following instructions to voters for straight ticket voting shall be printed on the ballot: Make a cross (X) within the circle of the political party of your choice if you wish to vote for all candidates running in that party column. If you vote a straight ticket, but wish to vote for one or more individual candidates of a different party, you may do so, and your vote for an individual candidate will override the straight party vote for that office. However, if you vote for one candidate of a different party for an office where more than one candidate is to be elected, be sure to vote individually for all candidates of your choice for that office, because your straight ticket vote will not be counted for that office.

II. In a state general election, the following instructions to voters for split ticket voting shall be printed on the ballot: If you do not wish to vote in any party circle, make crosses (X) in the squares opposite the names of the candidates for whom you wish to vote.

III.] In a state general election, the following instructions to voters for write-in voting shall be printed on the ballot: If you wish to vote for candidates whose names are not printed on the ballot, write in the names on the appropriate lines in the blank column at the right.

9 Contingency. If on January 1, 2000, as certified by the secretary of state, the United States Congress has passed campaign finance reform legislation which is in effect on that date, then sections 1-3 and section 5 of this act shall be null and void and shall have no force or effect as of January 1, 2000.

10 Repeal. The following are repealed:

I. RSA 656:10, relative to the straight ticket party circle.

II. RSA 659:66, relative to counting straight party votes.

11 Effective Date.

I. Sections 1-5 and section 9 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill limits the number of terms which a United States senator and a United States representative may serve. Beginning on January 1, 1994, no United States senator from New Hampshire shall serve more than 2 consecutive terms in the United States Senate, and no United States representative from New Hampshire shall serve more than 4 consecutive terms in the United States House of Representatives.

The provisions of the bill shall be suspended on January 1, 2000, if the secretary of state certifies that at least half of the members of the United States House of Representatives and at least half of the members of the United States Senate have not been elected from states which limit the terms of office for their members of Congress.

The bill also contains a contingency provision which nullifies the provisions of the bill on January 1, 2000, if, as of that date, the secretary of state certifies that the United States Congress has passed and adopted campaign finance reform legislation.

The bill also eliminates the provision for straight ticket voting in state primary and general elections.

Question is on the floor amendment.

A roll call was requested by Senator Colantuono.

Seconded by Senator Blaisdell.

The following Senators voted Yes: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes, Russman, Delahunty.

The following Senators voted No: Lamirande, W. King, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

Yeas: 11 - Nays: 12

Floor amendment fails.

SENATOR COLANTUONO: I rise to offer amendment #2786. This is the final single issue amendment that I intend to offer. This leaves in the straight ticket voting piece and it also leaves in the seniority piece, but it takes out the contingency regarding campaign finance reform. If you support taking that out, I would urge you to vote yes. I call for a roll call.

Senator Colantuono offered a floor amendment.

2786B

Floor Amendment to HB 390

Amend the title of the bill by replacing it with the following:

AN ACT

to limit the terms of office for the members of the United States Congress from New Hampshire, and relative to eliminating straight ticket voting on the ballot.

Amend the bill by replacing section 6 with the following:

6 Removing Reference to Circle on Ballot. Amend RSA 656:11 to read as follows:

656:11 Party Emblem. Above [each circle] ***the name of the political party*** shall be placed an emblem designating or distinguishing the political party assigned to that column. The emblem or device shall be selected by the secretary of state for each political party represented upon the ballot and shall be different for each of such parties and may be any appropriate symbol; but neither the coat of arms nor the seal of any state, nor of the United States, nor the national flag, nor any religious emblem or symbol, nor the portrait of any person, nor the representation of a coin nor of the currency of the United States shall be chosen as a distinguishing emblem.

7 Removing Reference to Circle on Ballot. Amend RSA 656:12 to read as follows:

656:12 Write-In Blanks. In the right-hand column of each state general election ballot, there shall be no [circle or] emblem but there shall be left as many blank lines without squares at the end thereof as there are persons to be elected to each office.

8 Removing Instructions to Voters on Ballot for Straight Ticket Voting. Amend RSA 659:18 to read as follows:

659:18 Instructions for [Voters; How to Mark the Ballot] ***Write-In Voting.***

[I. In a state general election, the following instructions to voters for straight ticket voting shall be printed on the ballot: Make a cross (X) within the circle of the political party of your choice if you wish to vote for all candidates running in that party column. If you vote a straight ticket, but wish to vote for one or more individual candidates of a different party, you may do so, and your vote for an individual candidate will override the straight party vote for that office. However, if you vote for one candidate of a different party for an office where more than one candidate is to be elected, be sure to vote individually for all candidates of your choice for that office, because your straight ticket vote will not be counted for that office.

II. In a state general election, the following instructions to voters for split ticket voting shall be printed on the ballot: If you do not wish to vote in any party circle, make crosses (X) in the squares opposite the names of the candidates for whom you wish to vote.

III.] In a state general election, the following instructions to voters for write-in voting shall be printed on the ballot: If you wish to vote for candidates whose names are not printed on the ballot, write in the names on the appropriate lines in the blank column at the right.

9 Contingency. If on January 1, 2000, as certified by the secretary of state, the United States Congress has adopted a revolving chairmanship program to replace its seniority system which has been instituted on that date, then sections 1-3 and section 5 of this act shall be null and void and shall have no force or effect as of January 1, 2000.

10 Repeal. The following are repealed:

I. RSA 656:10, relative to the straight ticket party circle.

II. RSA 659:66, relative to counting straight party votes.

11 Effective Date.

I. Sections 1-5 and section 9 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill limits the number of terms which a United States senator and a United States representative may serve. Beginning on January 1, 1994, no United States senator from New Hampshire shall serve more than 2 consecutive terms in the United States Senate, and no United States representative from New Hampshire shall serve more than 4 consecutive terms in the United States House of Representatives.

The provisions of the bill shall be suspended on January 1, 2000, if the secretary of state certifies that at least half of the members of the United States House of Representatives and at least half of the members of the United States Senate have not been elected from states which limit the terms of office for their members of Congress.

The bill also contains a contingency provision which nullifies the provisions of the bill on January 1, 2000, if, as of that date, the secretary of state certifies that the United States Congress has adopted a revolving chairmanship program to replace its seniority system.

The bill also eliminates the provision for straight ticket voting in state primary and general elections.

Question is on the floor amendment.

A roll call was requested by Senator Colantuono.

Seconded by Senator Blaisdell.

The following Senators voted Yes: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes, Russman, Delahunty.

The following Senators voted No: Lamirande, W. King, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

Yeas: 11 - Nays: 12

Floor amendment fails.

Question is on ordering to third reading.

A roll call was requested by Senator Colantuono.

Seconded by Senator Wheeler.

The following Senators voted Yes: Lamirande, W. King, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes, Russman, Delahunty.

Yeas: 12 - Nays: 11

Motion of ordering to third reading is adopted.

Recess.

Out of recess.

HB 382, an act changing the annual rate of interest on judgments and business transactions. Banks committee. Ought to pass. Senator Fraser for the committee.

SENATOR FRASER: HB 382 is an old friend. We had the same bill in, one year ago. The Senate at that time determined to report the bill out as inexpedient to legislate. As the record indicates, Mr. President, the bill is coming out of the Banks committee without a recommendation with the vote being two to two. Essentially what this bill does, well I had better give a little bit of history. Initially the bill that was sent over from the House . . .

SENATOR HOUGH (In the Chair): Senator Fraser, excuse me. But the Chair would entertain a motion at this time. You have to speak to something. You can't speak to no report. Are you prepared to make a motion for the disposition of HB 382?

SENATOR FRASER: If it is in order, Mr. President, yes. I move that the bill ought to pass.

Recess.

Out of recess.

Senator Disnard moved to have HB 382, an act changing the annual rate of interest on judgments and business transactions, laid on the table.

Adopted.

LAID ON THE TABLE

HB 382, an act changing the annual rate of interest on judgments and business transactions.

HB 205-FN-A, an act relative to the statewide education improvement and assessment program. Education committee. Ought to Pass with Amendment. Senator Disnard for the committee.

2612B

Amendment to HB 205-FN-A

Amend RSA 193-C:2, II as inserted by section 2 of the bill by replacing it with the following:

II. "Committee" means the legislative oversight committee established to review the statewide education improvement and assessment program.

Amend the introductory paragraph of RSA 193-C:3 as inserted by section 2 of the bill by replacing it with the following:

193-C:3 Program Established; Goals. There is established within the department of education a statewide education improvement and assessment program. The commissioner shall develop and implement this program in conjunction with the legislative oversight committee. In carrying out this program, the commissioner shall consult widely with educators at all levels, business people, government officials, community representatives, and parents.

Amend the introductory paragraph of RSA 193-C:7 as inserted by section 2 of the bill by replacing it with the following:

193-C:7 Legislative Oversight Committee. An oversight committee shall be established consisting of:

Amend RSA 193-C:8 as inserted by section 2 of the bill by replacing it with the following:

193-C:8 Duties of the Legislative Oversight Committee. The oversight committee shall review the development and implementation of the program to ensure that they are in accordance with legislative policy. Implementation of the program shall be in conjunction with the committee's review.

Senator Disnard moved to have HB 205-FN-A, an act relative to the statewide education improvement and assessment program, laid on the table.

Adopted.

LAID ON THE TABLE

HB 205-FN-A, an act relative to the statewide education improvement and assessment program.

HB 567-FN-A, an act requiring the Office of State Planning to conduct a satellite survey of clearcut areas and making an appropriation therefor. Environment committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: Earlier this session a bill regulating clearcutting was re-referred due in part to the lack of sound evidence that clearcutting is harming our natural resources. This bill requires the Office of State Planning to contract with UNH to perform satellite imagery to review the extent of clearcutting. Federal grant monies will pay for half the cost of this valuable project. The committee urges your support. This is a sample of what the computer generated of what clearcut pictures will look like. The pink areas show what has been clearcut. I urge your support.

Adopted.

Ordered to third reading.

HB 572-FN-A, an act authorizing the Division of Forests and Lands to assess administrative fines, establishing a forest management and protection fund, and appointing special deputy forest rangers. Environment committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: HB 572 is designed to provide adequate resources for the Division of Forest and Lands to manage state forest. The bill sets up a dedicated fund for forestry activities in the Department of Resource and Economic Development that will be supported by administrative fines. It also allows for the appointment of special deputy forest rangers an extra set of eyes and ears in the woods to ensure that state forestry laws are being enforced. The bill is supported by the

forestry community as well as the environmentalist and municipal officials. The committee urges your support of ought to pass.

Adopted.

Ordered to third reading.

HB 136 FN-LOCAL, an act pertaining to the authority and operation of the Public Utilities Commission. Executive Departments and Administration committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2763B

Amendment to HB 136-FN-LOCAL

Amend the bill by replacing section 1 with the following:

1 New Section; Appearance. Amend RSA 365 by inserting after section 10 the following new section:

365:10-a Appearance. Notwithstanding any other provision of law to the contrary, the commission may in its discretion determine who, in addition to those lawyers licensed in the state of New Hampshire to do so, may appear before the commission on behalf of any party, provided however that the discretion shall not be exercised unreasonably or in a discriminatory manner. All parties will be required to adhere to the commission's rules of practice and procedure in addition to any orders of the commission or agreements between the parties, including but not limited to those concerning confidentiality.

Amend the bill by replacing all after section 4 with the following:

5 New Section; Nuclear Decommissioning Finance Committee; Rulemaking. Amend RSA 162-F by inserting after section 15 the following new section:

162-F:15-a Rulemaking. The committee shall adopt rules under RSA 541-A relative to the conduct of hearings under RSA 162-F:21 and such other matters necessary to provide assurance of adequate funding for decommissioning as provided under this chapter.

6 Effective Date.

I. Section 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill:

(1) Allows the public utilities commission to allow a non-lawyer to appear on behalf of any party.

(2) Allows the public utilities commission to assess the costs of investigations, including the costs of experts, accountants and other assistants against the petitioning utility or party.

(3) Allows the commission to adopt rules regarding the recovery of rate case expenses, conduct of public hearings, and certain matters regarding decommissioning funding.

SENATOR COLANTUONO: This bill is a request by the Public Utilities Commission. It is somewhat of a housekeeping measure. The analysis is fairly accurate. It allows the PUC to allow persons who are not lawyers to appear in front of them. This has come up for example with a gentleman from the BIA who sometimes appears in front of them. Who is not a lawyer. They want to have clear statutory authority to allow that and also the ability to disallow someone who is not appropriate to appear. It allows the PUC to access costs of investigations against a petitioned util-

ity or party and it allows the commission to adopt rules regarding the recovery of rate case expenses. The amendment further allows the commission to adopt rules relative to the decommissioning committee which they presently don't have but should have. So with the amendment, the committee recommends ought to pass

Amendment adopted.

Senator Hollingworth moved to have HB 136 FN-LOCAL an act pertaining to the authority and operation of the Public Utilities Commission, laid on the table.

Senator Wheeler requested a division vote.

Senator Wheeler withdrew his request for a division vote.

Adopted.

LAID ON THE TABLE

HB 136 FN-LOCAL, an act pertaining to the authority and operation of the Public Utilities Commission.

TAKEN OFF THE TABLE

Senator Russman moved to have HB 136 FN-LOCAL, an act pertaining to the authority and operation of the Public Utilities Commission, taken off the table.

Adopted.

SENATOR HOLLINGWORTH: I would like to ask the Senate if they would extend me Senate courtesy. I would like to bring before you some amendments and, unfortunately, they are not completed today. They are not the amendments that I brought before the committee, but I think that they are important and they are clearly in order on this bill. They are germane to the decommissioning and they are necessary for us to meet what is current law and to keep us out of a legal problem.

SENATOR CURRIER: This bill was before us last week and was rereferred to the committee on Executive Departments which I chair. Senator Hollingworth did bring a couple of amendments at that time and the committee reviewed the subject matter of those amendments, and I understand that these new amendments that she is working on are, in fact, different from that. The committee voted and I am not sure of that exact vote, to refer the bill back out ought to pass with amendment without the Hollingworth amendments at that time. Based on that the subject matter dealing with the decommissioning aspect of the bill went, in fact, a little bit beyond the realm of this bill and that it should actually survive on its own merits and an additional bill later on and that was the rationale for the committee to refer the bill back out from the committee last week.

Recess.

Out of recess.

SENATOR RUSSMAN: It has been our habit to encourage the Senate to allow our fellow Senator that opportunity in the past. And it is a matter of plain fairness when the amendment hasn't been ready, if that is the issue. If the amendment isn't ready, then we have given that Senator the opportunity to at least bring the amendment before us and have that Senator have the amendment have its day when we vote it up or down.

I may support the amendments and I may not, but I think that if anyone of us had an amendment down in Legislative Services and they were working on it and it wasn't ready, we would readily table it until such time that it was ready, particularly knowing that it has got to be ready by tomorrow, and if it isn't ready then it is going to stay on the table. I would expect that would be the end of it. But I think that we ought to give this Senator, as we would any Senator, the opportunity to at least see if the amendment can be drawn, whether it is good or bad, and then we can vote on the merits of it and extend that courtesy to each one of us.

SENATOR CURRIER: Senator Russman, did I hear you say that the bill would stay on the table even if the amendments weren't ready tomorrow?

SENATOR RUSSMAN: Okay, she says that she would not leave it on the table. I guess my expectation . . . I would support what Senator Colantuono wanted to do in passing it if the amendments aren't ready. But I think that we remember that last time we had to wait for a whole afternoon two years ago when Senator Cohen, I think, had an amendment in Legislative Services and Senator Humphrey joined me in asking the Senate to give him the opportunity to at least let him have the amendment drawn so that it could be brought before us. But I think that in the spirit of fairness, we ought to at least allow that to happen. And then if it is not, we can move the bill and vote on it accordingly.

SUBSTITUTE MOTION

Senator Colantuono moved to make HB 136 FN-LOCAL, an act pertaining to the authority and operation of the Public Utilities Commission, a special order on May 19, 1993 at 1:00 p.m.

Adopted.

SPECIAL ORDER

HB 136 FN-LOCAL, an act pertaining to the authority and operation of the Public Utilities Commission, for Wednesday, May 19, 1993 at 1:00 p.m.

HB 448, an act to define total expenditures made during a state primary campaign. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Currier for the committee.

2657B

Amendment to HB 448

Amend the title of the bill by replacing it with the following:

AN ACT

to limit the terms of office for the members of the United States Congress from New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Declaration of Purpose. The New Hampshire legislature hereby finds that it is desirable to limit the terms of office for New Hampshire's members of Congress. A limitation on the term of office is necessary in order to guard against excessive concentrations of power, and is also necessary in order to broaden the opportunities for public service and to assure that members of the United States Congress from New Hampshire are representative of and responsive to New Hampshire citizens. In enacting this legislation, the New Hampshire legislature also hereby states its

support for a nationwide limit of 12 consecutive years of service in the United States Senate and 8 consecutive years of service in the House of Representatives and promises to use its best efforts to work for such a limit.

2 Limiting Term for United States Senator. Amend RSA 653:3 to read as follows:

653:3 United States Senators.

I. At the state general election in 1980 and at the state general election every sixth year thereafter and at the state general election in 1984 and at the state general election every sixth year thereafter, the voters of the state shall elect one United States senator.

II. No United States senator shall serve more than 2 consecutive terms in the United States Senate. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1994. Any person appointed or elected to fill a vacancy in the United States Senate and who serves at least 1/2 of a term of office shall be considered to have served a term in that office for the purposes of this paragraph. Terms are considered consecutive unless they are at least 4 year apart.

3 Limiting Term for United States Representative. Amend RSA 653:4 to read as follows:

653:4 United States Representatives.

I. At every state general election, the voters of each congressional district shall elect one United States representative.

II. No United States representative shall serve more than 4 consecutive terms in the United States House of Representatives. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1994. Any person appointed or elected to fill a vacancy in the United States House of Representatives and who serves at least 1/2 of a term of office shall be considered to have served a term in that office for the purposes of this paragraph. Terms are considered consecutive unless they are at least 4 years apart.

4 Severability. If any provision of section 2 or 3 of this act or the application thereof, relative to limiting the term for United States senators and representatives is held to be invalid, the invalidity does not affect any other provision or section of this act, which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

5 Contingency. If on January 1, 2000, as certified by the secretary of state, at least half the members of the United States House of Representatives and at least half the members of the United States Senate, other than those members of the New Hampshire delegation, have not been elected from states which limit the terms of office for their members of Congress, then sections 1-3 of this act shall be suspended until such date as certified by the secretary of state that half the United States Senators and half the United States House of Representatives have been elected from states which limit the terms of office of their members of Congress.

6 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill limits the number of terms which a United States senator and a United States representative may serve. Beginning on January 1, 1994, no United States senator from New Hampshire shall serve more than 2 consecutive terms in the United States Senate, and no United States rep-

resentative from New Hampshire shall serve more than 4 consecutive terms in the United States House of Representatives.

The provisions of the bill shall be suspended on January 1, 2000, if the secretary of state certifies that at least half of the members of the United States House of Representatives and at least half of the members of the United States Senate have not been elected from states which limit the terms of office for their members of Congress.

SENATOR CURRIER: The amendment is on page six of the calendar. This will give you one last opportunity to vote term limits for the United States Congress. This bill, the amendment which is on page six is the exact copy of the House version that was sent to us, clean. I would also like to state that the committee reported out that in conclusion that it was reported out four to one.

Recess.

Out of recess.

Question is on the committee amendment.

A roll call was requested by Senator Wheeler.

Seconded by Senator Colantuono.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Fraser, Lovejoy, Currier, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, McLane, Podles, J. King, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: Barnes, Russman, Delahunty.

Yeas: 20 - Nays: 3

Committee amendment is adopted.

Recess.

Out of recess.

MOTION OF RECONSIDERATION

Senator W. King, having voted with the prevailing side, moved reconsideration of HB 448 an act to define total expenditures made during a state primary campaign.

Adopted.

Question is on the committee amendment.

A roll call was requested by Senator W. King.

Seconded by Senator Wheeler.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Fraser, Lovejoy, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, McLane, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Currier.

Yeas: 22 - Nays: 1

Committee amendment is adopted.

SENATOR SHAHEEN: What this floor amendment does is exactly what the committee amendment to HB 390 did. So if we adopt this amendment, we have adopted the exact package in HB 448 that we have earlier adopted in HB 390. I would urge the body to adopt the amendments.

Senator Shaheen offered a floor amendment.

2841B

Floor Amendment to HB 448

Amend the title of the bill by replacing it with the following:

AN ACT

to limit the terms of office for the members of the United States Congress from New Hampshire, and relative to eliminating straight ticket voting on the ballot.

1 Amend the bill by replacing section 6 with the following:

6 Removing Reference to Circle on Ballot. Amend RSA 656:11 to read as follows:

656:11 Party Emblem. Above [each circle] ***the name of the political party*** shall be placed an emblem designating or distinguishing the political party assigned to that column. The emblem or device shall be selected by the secretary of state for each political party represented upon the ballot and shall be different for each of such parties and may be any appropriate symbol; but neither the coat of arms nor the seal of any state, nor of the United States, nor the national flag, nor any religious emblem or symbol, nor the portrait of any person, nor the representation of a coin nor of the currency of the United States shall be chosen as a distinguishing emblem.

7 Removing Reference to Circle on Ballot. Amend RSA 656:12 to read as follows:

656:12 Write-In Blanks. In the right-hand column of each state general election ballot, there shall be no [circle or] emblem but there shall be left as many blank lines without squares at the end thereof as there are persons to be elected to each office.

8 Removing Instructions to Voters on Ballot for Straight Ticket Voting. Amend RSA 659:18 to read as follows:

659:18 Instructions for [Voters; How to Mark the Ballot] ***Write-In Voting.***

[I. In a state general election, the following instructions to voters for straight ticket voting shall be printed on the ballot: Make a cross (X) within the circle of the political party of your choice if you wish to vote for all candidates running in that party column. If you vote a straight ticket, but wish to vote for one or more individual candidates of a different party, you may do so, and your vote for an individual candidate will override the straight party vote for that office. However, if you vote for one candidate of a different party for an office where more than one candidate is to be elected, be sure to vote individually for all candidates of your choice for that office, because your straight ticket vote will not be counted for that office.

II. In a state general election, the following instructions to voters for split ticket voting shall be printed on the ballot: If you do not wish to vote in any party circle, make crosses (X) in the squares opposite the names of the candidates for whom you wish to vote.

III.] In a state general election, the following instructions to voters for write-in voting shall be printed on the ballot: If you wish to vote for candidates whose names are not printed on the ballot, write in the names on the appropriate lines in the blank column at the right.

9 Contingency. If on January 1, 2000, as certified by the secretary of state, the United States Congress has either passed campaign finance reform legislation which is in effect on that date, or has adopted a revolv-

ing chairmanship program to replace its seniority system which has been instituted on that date, then sections 1-3 and section 5 of this act shall be null and void and shall have no force or effect as of January 1, 2000.

10 Repeal. The following are repealed:

I. RSA 656:10, relative to the straight ticket party circle.

II. RSA 659:66, relative to counting straight party votes.

11 Effective Date.

I. Sections 1-5 and section 9 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill limits the number of terms which a United States senator and a United States representative may serve. Beginning on January 1, 1994, no United States senator from New Hampshire shall serve more than 2 consecutive terms in the United States Senate, and no United States representative from New Hampshire shall serve more than 4 consecutive terms in the United States House of Representatives.

The provisions of the bill shall be suspended on January 1, 2000, if the secretary of state certifies that at least half of the members of the United States House of Representatives and at least half of the members of the United States Senate have not been elected from states which limit the terms of office for their members of Congress.

The bill contains a contingency provision which nullifies the provisions of the bill on January 1, 2000, if, as of that date, the secretary of state certifies that the United States Congress has either passed and adopted campaign finance reform legislation, or has adopted a revolving chairmanship program to replace its seniority system.

The bill also eliminates the provision for straight ticket voting in state primary and general elections.

Question is on the floor amendment.

A roll call was requested by Senator Wheeler.

Seconded by Senator Blaisdell.

The following Senators voted Yes: Lamirande, W. King, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes, Russman, Delahunty.

Yeas: 12 - Nays: 11

Floor amendment is adopted.

Ordered to third reading.

HB 615-FN-LOCAL, an act recodifying the municipal budget law. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2749B

Amendment to HB 615-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Municipal Budget Law. RSA 32 is repealed and reenacted to read as follows:

CHAPTER 32

MUNICIPAL BUDGET LAW

32:1 Statement of Purpose. The purpose of this chapter is to clarify the law as it existed under former RSA 32. A town or district may establish a municipal budget committee to assist its voters in the prudent appropriation of public funds. The budget committee, in those municipalities which establish one, is intended to have budgetary authority analogous to that of a legislative appropriations committee. It is the legislature's further purpose to establish uniformity in the manner of appropriating and spending public funds in all municipal subdivisions to which this chapter applies, including those towns, school districts and village districts which do not operate with budget committees, and have not before had much statutory guidance.

32:2 Application. RSA 32:1-13, shall apply to all towns, school districts, cooperative school districts, village districts, and any other municipal entities, including those created pursuant to RSA 53-A or 53-B, which adopt their budgets at an annual meeting of their voters. RSA 32:14-22, concerning budget committees, shall apply only in those towns or districts adopting that subdivision pursuant to RSA 32:14, I, and shall apply automatically in school districts or village districts located wholly within towns adopting that subdivision.

32:3 Definitions. In this chapter:

I. "Appropriate" means to set apart from the public revenue of a municipality a certain sum for a specified purpose and to authorize the expenditure of that sum for that purpose.

II. "Appropriation" means an amount of money appropriated for a specified purpose by the legislative body.

III. "Budget" means a statement of recommended appropriations and anticipated revenues submitted to the legislative body as an attachment to, and as part of the warrant for, an annual or special meeting.

IV. "District" includes a school district, cooperative school district, village district, or district created pursuant to RSA 53-A or 53-B.

V. "Purpose" means a goal or aim to be accomplished through the expenditure of public funds. In addition:

(a) As used in RSA 32:8 and RSA 32:10, V, concerning the limitation on expenditures, a line on the budget form posted with the warrant, or form submitted to the department of revenue administration, or an appropriation contained in a special warrant article, shall be considered a single "purpose."

(b) As used in RSA 32:10, I-IV, concerning transfers of appropriations and records thereof, "purpose" refers, in addition, to individual line items in whatever detailed budget or chart of accounts is regularly used by the municipality. The general wording of a vote adopting a budget or portion thereof shall not be considered a "purpose" to which an amount may be transferred.

VI. "Special warrant article" means any article in the warrant for an annual or special meeting which proposes an appropriation by the meeting and which:

(a) Is submitted by petition; or

(b) Calls for an appropriation of an amount to be raised by the issuance of bonds or notes pursuant to RSA 33; or

(c) Calls for an appropriation to a separate fund created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or trust fund under RSA 31:19-a; or

(d) Is designated in the warrant, by the governing body, as a special warrant article, or as a nonlapsing or nontransferable appropriation.

Preparation of Budgets

32:4 Estimate of Expenditures and Revenues. All municipal officers, administrative officials and department heads, including officers of such self-sustaining departments as water, sewer, and electric departments, shall prepare statements of estimated expenditures and revenues for the ensuing fiscal year, and shall submit such statements to their respective governing bodies, at such times and in such detail as the governing body may require.

32:5 Budget Preparation.

I. The governing body, or the budget committee if there is one, shall hold at least one public hearing on each budget, not later than 25 days before each annual or special meeting, public notice of which shall be given at least 7 days in advance, and after the conclusion of public testimony shall finalize the budget to be submitted to the legislative body.

II. All purposes and amounts of appropriations to be included in the budget or special warrant articles shall be disclosed or discussed at the final hearing. The governing body or budget committee shall not thereafter insert, in any budget column or special warrant article, an additional amount or purpose of appropriation which was not disclosed or discussed at that hearing, without first holding one or more public hearings on supplemental budget requests for town or district expenditures.

III. All appropriations recommended shall be stipulated on a "gross" basis, showing anticipated revenues from all sources, including grants, gifts, bequests, and bond issues, which shall be shown as offsetting revenues to appropriations affected. The budget shall be prepared according to rules adopted by the commissioner of revenue administration under RSA 541-A, relative to the required forms and information to be submitted for recommended appropriations and anticipated revenues for each town or district.

IV. Budget forms for the annual meeting shall include, in the section showing recommended appropriations, comparative columns indicating at least the following information:

(a) Appropriations voted by the previous annual meeting.

(b) Actual expenditures made pursuant to those appropriations, or in those towns and districts which hold annual meetings prior to the close of the current fiscal year, actual expenditures for the most recently completed fiscal year.

(c) The appropriations recommended by the governing body.

(d) If there is a budget committee, the appropriations recommended by the budget committee.

V. When any purpose of appropriation, submitted by a governing body or by petition, appears in the warrant as part of a special warrant article, the article shall contain a notation of whether or not that appropriation is recommended by the governing body, and, if there is a budget committee, a notation of whether or not it is recommended by the budget committee. All appropriations made under special warrant articles shall be subject to the hearing requirements of paragraphs I and II of this section.

VI. Upon completion of the budgets, an original of each budget and of each recommendation upon special warrant articles, signed by a quorum of the governing body, or of the budget committee, if any, shall be placed on file with the town or district clerk. A certified copy shall be forwarded by the chair of the budget committee, if any, or otherwise by the chair of the governing body, to the commissioner of revenue administration pursuant to RSA 21-J:34.

VII. The governing body shall post certified copies of the budget with the warrant for the meeting. In the case of towns, the budget shall also be printed in the town report made available to the legislative body at least one week before the date of the annual meeting. A school district or village district may vote, under an article inserted in the warrant, to require the district to print its budget in an annual report made available to the district's voters at least one week before the date of the annual meeting. Such district report may be separate or may be combined with the annual report of the town or towns within which the district is located.

VIII. The procedural requirements of this section shall apply to any special meeting called to raise or appropriate funds, or to reduce or rescind any appropriation previously made, provided, however, that any budget form used may be prepared locally. Such a form or the applicable warrant article shall, at a minimum, show the request by the governing body or petitioners, the recommendation of the budget committee, if any, and the sources of anticipated offsetting revenue, other than taxes, if any.

Appropriations

32:6 Appropriations Only at Annual or Special Meeting. All appropriations in municipalities subject to this chapter shall be made by vote of the legislative body of the municipality at an annual or special meeting. No such meeting shall appropriate any money for any purpose unless that purpose appears in the budget or in a special warrant article, provided, however, that the legislative body may vote to appropriate more than, or less than, the amount recommended for such purpose in the budget or warrant, except as provided in RSA 32:18.

32:7 Lapse of Appropriations. Annual meeting appropriations shall cover anticipated expenditures for one fiscal year. All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, unless:

I. The amount has, prior to the end of that fiscal year, become encumbered by a legally-enforceable obligation, created by contract or otherwise, to any person for the expenditure of that amount; or

II. The amount is legally placed in any nonlapsing fund properly created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or a town-created trust fund under RSA 31:19-a; or

III. The amount is to be raised, in whole or in part, through the issuance of bonds or notes pursuant to RSA 33, in which case the appropriation, unless rescinded, shall not lapse until the fulfillment of the purpose or completion of the project being financed by the bonds or notes; or

IV. The amount is appropriated from moneys anticipated to be received from a state, federal or other governmental or private grant, in which case the appropriation shall remain nonlapsing for as long as the money remains available under the rules or practice of the granting entity; or

V. The amount is appropriated under a special warrant article, in which case the local governing body may, at any properly noticed meeting held prior to the end of the fiscal year for which the appropriation is made, vote to treat that appropriation as encumbered for a maximum of one additional fiscal year; or

VI. The amount is appropriated under a special warrant article and is explicitly designated in the article and by vote of the meeting as nonlapsing, in which case the meeting shall designate the time at which the appropriation shall lapse, which in no case shall be later than 5 years after the end of the fiscal year for which the appropriation is made.

Expenditures

32:8 Limitation on Expenditures. No board of selectmen, school board, village district commissioners or any other officer, employee, or agency of the municipality acting as such shall pay or agree to pay any money, or incur any liability involving the expenditure of any money, for any purpose in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made, except as provided in RSA 32:9-11.

32:9 Exception. Money may be spent to pay a judgment against the town or district, without an appropriation.

32:10 Transfer of Appropriations. If changes arise during the year following the annual meeting that make it necessary to expend more than the amount appropriated for a specific purpose, the governing body may transfer to that appropriation an unexpended balance remaining in some other appropriation, provided, however, that:

I. The total amount spent shall not exceed the total amount appropriated at the town or district meeting.

II. Records shall be kept by the governing body, such that the budget committee, if any, or any citizen requesting such records pursuant to RSA 91-A:4, may ascertain the purposes of appropriations to which, and from which, amounts have been transferred; provided, however, that neither the budget committee nor other citizens shall have any authority to dispute or challenge the discretion of the governing body in making such transfers.

III. A statement comparing all legislative body appropriations against all expenditures shall be deemed adequate for purposes of the records required by paragraph II, so long as every expenditure has been properly authorized and properly classified and entered and any expenditures exceeding the original legislative appropriations are offset by unexpended balances remaining in other appropriations, in which case the governing body shall not be required to designate the specific source of each transfer.

IV. Any amount appropriated at the meeting under a special warrant article may be used only for the purpose specified in that article and shall not be transferred.

V. The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meeting deletes a purpose, or reduces the amount appropriated for that purpose to zero, that purpose shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose.

32:11 Emergencies. When an unusual circumstance arises during the year which makes it necessary to expend money in excess of an appropriation which may result in an overexpenditure of the total amount appropriated for all purposes at the meeting or when no appropriation has been made, the selectmen or village district commissioners, upon application to the commissioner of revenue administration or the school board upon application to the commissioner of education, may be given authority to make such expenditure, provided that:

I. Such application shall be made prior to the making of such expenditure. No such authority shall be granted until a majority of the budget committee, if any, has approved the application in writing. If there is no budget committee, the governing body shall hold a public hearing on the request, with notice as provided in RSA 91-A:2.

II. The commissioner of revenue administration or the commissioner of education may accept and approve an application after an expenditure if caused by a sudden or unexpected emergency, in which case paragraph I shall not apply.

III. Neither the commissioner of revenue administration nor the commissioner of education shall approve such an expenditure unless the governing body designates the source of revenue to be used. Neither commissioner shall have the authority to increase the town or district's tax rate in order to fund such an expenditure.

32:12 Penalty. Any person or persons violating the provisions of this subdivision shall be subject to removal from office on proper petition brought before the superior court. Such petition shall take precedence over other actions pending in the court and shall be heard and decided as speedily as possible.

32:13 Contracts; Expenditures Prior to Meeting.

I. This subdivision shall not be construed to imply that a local legislative body, through its actions on appropriations, has the authority to nullify a prior contractual obligation of the municipality, when such obligation is not contingent upon such appropriations and is otherwise valid under the New Hampshire law of municipal contracts, or to nullify any other binding state or federal legal obligation which supercedes the authority of the local legislative body.

II. This subdivision shall not be construed to affect the authority of the local governing body, in towns with a March annual meeting and a January through December fiscal year, to make expenditures between January 1 and the annual meeting which are reasonable in light of prior year's appropriations and expenditures for the same purposes during the same time period.

Budget Committee

32:14 Adoption.

I. This subdivision may be adopted:

(a) By any town with a town meeting form of government, including those with a budgetary town meeting or representative town meeting pursuant to RSA 49-D:3, II and III;

(b) By a cooperative school district, in accordance with RSA 195:12-a;

(c) By any village district, or district created under RSA 53-A or 53-B, which adopts its budget at an annual meeting of its voters, and which is located in more than one municipality; or

(d) By any school district or village district which adopts its budget at an annual meeting of its voters, but which lies wholly within a municipality that lacks authority to adopt this subdivision.

II. This subdivision may be adopted by a majority vote of those present and voting, under an article in the warrant for the annual meeting, inserted by the governing body or by petition.

III. Voting shall be by ballot, but the question shall not be placed on the official ballot used to elect officers. Polls shall remain open and ballots shall be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question.

IV. If the vote is favorable, the town or district shall at that same meeting vote, by ballot or other means, to determine the number of members-at-large, as provided in RSA 32:15, I, and whether they shall be elected or appointed by the moderator.

V. A town or district which has adopted this subdivision may rescind its adoption in the manner described in paragraphs II and III.

32:15 Budget Committee Membership.

I. The budget committee shall consist of:

(a) Three, 6, 9 or 12 members-at-large, who may be either elected or appointed by the moderator, as the town or district adopting the provisions this subdivision shall by vote determine, who shall serve staggered terms of 3 years; and

(b) One member of the governing body of the municipality and, if the municipality is a town, one member of the school board of each school district wholly within the town and one member of each village district wholly within the town, all of whom shall be appointed by their respective boards to serve for a term of one year and until their successors are qualified. Each such member may be represented by an alternate member designated by the respective board, who shall, when sitting, have the same authority as the regular member.

II. If the meeting decides that members-at-large are to be appointed, the staggering of terms shall begin that same year, with 1/3 of such members chosen to hold office for one year, 1/3 for 2 years, and 1/3 for 3 years, and each year thereafter 1/3 shall be chosen for terms of 3 years and until their successors are appointed and qualified. All such appointments shall be made within 30 days after the annual meeting.

III. If the meeting decides members-at-large are to be elected, the meeting shall either elect the initial members for one-year terms by means other than by official ballot, or shall authorize the moderator to appoint members to serve until the next annual meeting, as provided in RSA 669:17. Elections for staggered terms, as described in paragraph II, shall not begin until that next annual meeting, and shall be by official ballot if the municipality has adopted the official ballot system, as set forth in RSA 669.

IV. A town or district which has adopted this subdivision may vote at any subsequent annual meeting to change the number or manner of selection of its members-at-large. No such change shall take effect until the annual meeting following the meeting at which the change was adopted.

V. No selectman, town manager, member of the school board, village district commissioner, full-time employee, or part-time department head of the town, school district or village district or other associated agency shall serve as a member-at-large. Every member-at-large shall be domiciled in the town or district adopting this subdivision and shall cease to hold office immediately upon ceasing to be so domiciled.

VI. One of the members-at-large shall be elected by the budget committee as chair. The committee may elect other officers as it sees fit. A member-at-large shall cease to hold office immediately upon missing 4 consecutive scheduled or announced meetings of which that member received reasonable notice, without being excused by the chair.

VII. In municipalities where members-at-large are appointed, the chair shall notify the moderator immediately upon the occurrence of any vacancy in the membership-at-large, and the vacancy shall be filled by appointment by the moderator within 5 days of such notification, otherwise by the budget committee. In municipalities where members-at-large are elected, vacancies shall be filled by appointment by the budget committee. Persons appointed to fill vacancies shall serve until the next annual meeting at which time a successor shall be elected or appointed to either fill the unexpired term or start a new term, as the case may be.

32:16 Duties and Authority of the Budget Committee. In any town which has adopted the provisions of this subdivision, the budget committee shall have the following duties and responsibilities:

I. To prepare the budget as provided in RSA 32:5 for submission to each annual or special meeting of the voters of the municipality, and, if the municipality is a town, the budgets of any school district or village district wholly within the town, unless the warrant for such meeting does not propose any appropriation.

II. To confer with the governing body or bodies and with other officers, department heads and other officials, relative to estimated costs, revenues anticipated, and services performed to the extent deemed necessary by the budget committee. It shall be the duty of all such officers and other persons to furnish such pertinent information to the budget committee.

III. To conduct the public hearings required under RSA 32:5, I.

IV. To forward copies of the final budgets to the clerk or clerks, as required by RSA 32:5, VI, and, in addition, to deliver 2 copies of such budgets and recommendations upon special warrant articles to the respective governing body or bodies at least 20 days before the date set for the annual or special meeting, to be posted with the warrant.

32:17 Duties of Governing Body and Other Officials. The governing bodies of municipalities adopting this subdivision, or of districts which are wholly within towns adopting this subdivision, shall review the statements submitted to them under RSA 32:4 and shall submit their own recommendations to the budget committee, together with all information necessary for the preparation of the annual budget, including each purpose for which an appropriation is sought and each item of anticipated revenue, at such time as the budget committee shall fix. In the case of a special meeting calling for the appropriation of money, the governing body shall submit such information not later than 5 days prior to the required public hearing. Department heads and other officers shall submit their departmental statements of estimated expenditures and receipts to the budget committee, if requested.

32:18 Limitation of Appropriations. In any municipality electing this subdivision, or any district wholly within a town electing this subdivision, the total amount appropriated at any annual meeting shall not exceed by more than 10 percent the total amount recommended by the budget committee for such meeting. These totals shall include appropriations contained in special warrant articles. Money may be raised and appropriated for purposes included in the budget or in the warrant and not recommended by the budget committee, but not to an amount which would increase the total appropriations by more than the 10 percent allowed under this paragraph. The 10 percent increase allowable under this paragraph shall be computed on the total amount recommended by the budget committee less that part of any appropriation item which constitutes fixed charges. Fixed charges shall include appropriations for:

I. Bonds, and all interest and principal payments thereon.

II. Notes, except tax anticipation notes, and all interest and principal payments thereon.

III. Mandatory assessments imposed on towns by the county, state or federal governments.

32:19 Collective Bargaining Agreements. Whenever items or portions of items in a proposed budget constitute appropriations, the purpose of which is to implement cost items of a collective bargaining agreement negotiated pursuant to RSA 273-A, either previously ratified or concurrently being submitted for ratification by the legislative body, or the purpose of which is to implement the recommendations of a neutral party in the case of a dispute, as provided in RSA 273-A:12, such items shall be submitted to the budget committee and considered in its budget prepa-

ration. Such appropriations shall be submitted to the legislative body and shall include a statement of the governing body's recommendation and a separate statement of the budget committee's recommendation. Such appropriations shall be exempt from the 10 percent limitation set forth in RSA 32:18. The failure of the budget committee to recommend any portion of such appropriations shall not be deemed an unfair labor practice under RSA 273-A.

32:20 At Special Meetings. So long as the provisions of this subdivision remain in force in any municipality, no appropriation shall be made at any special meeting for any purpose not approved by the budget committee, unless it is within the allowable 10 percent increase if RSA 32:18 has been adopted, except as provided in RSA 32:19.

32:21 Exceptions. In cases where the town or a district wholly within the town has been ordered by the division of water supply and pollution control, under the provisions of RSA 147, 485 or 485-A, to install, enlarge or improve waterworks or to install, enlarge or improve sewerage, sewage, or waste treatment facilities, the 10 percent limitation of RSA 32:18 and 20, shall not apply.

32:22 Review of Expenditures. Upon request by the budget committee, the governing body of the town or district, or the town manager or other administrative official, shall forthwith submit to the budget committee a comparative statement of all appropriations and all expenditures by them made in such detail as the budget committee may require. The budget committee shall meet periodically to review such statements. The provisions of this section shall not be construed to mean that the budget committee, or any member of the committee, shall have any authority to dispute or challenge the discretion of other officials over current town or district expenditures, except as provided in RSA 32:23.

32:23 Initiation of Removal Proceedings. Upon receipt of the reports provided for by RSA 32:22, the budget committee shall examine the same promptly, and if it shall be found that the governing body or town manager have failed to comply with the provisions of this chapter concerning expenditures, a majority of the committee, at the expense of the municipality, may petition the superior court for removal as provided in RSA 32:12.

32:24 Other Committees. Nothing in this subdivision shall prevent a municipality from establishing advisory budget or finance committees, with such duties and powers as the municipality sees fit, but no such committee's recommendations shall have any limiting effect on appropriations, as set forth in RSA 33:18, unless all the procedures in this subdivision are followed.

2 Transition Provision. Any municipality which has validly adopted RSA Chapter 32 prior to the effective date of this act shall be deemed to have adopted RSA 32:14-23 concerning budget committees, as inserted by this act, and to have elected RSA 32:18 as inserted by this act, until such time as the municipality shall vote otherwise.

3 Reference Change. Amend RSA 39:2 to read as follows:

39:2 Warrant. The warrant for any town meeting shall be under the hands of the selectmen, and shall prescribe the place, day and hour of the meeting, and, if there is an election at said meeting, in which an official printed ballot containing more than one name is used, the warrant therefor shall prescribe the time the polls are to open and also an hour before which the polls may not close. A town meeting may vote to keep the polls open to a later hour but may not vote to close the polls at an earlier hour than that prescribed by the selectmen hereunder. The subject

matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant, and nothing done at any meeting, except the election of any town officer required by law to be made at such meeting, shall be valid unless the subject thereof is so stated. Provided that in case where the article in the warrant calls for the appropriation of specific sum of money the sum of money appropriated thereunder may be decreased or increased by the vote of the town, provided further that in a town under the municipal budget act no increase shall be valid which would violate the provisions of RSA [32:8] ***32:18***.

4 Towns with Certain Charters. Amend RSA 49-B:13, III to read as follows:

III. RSA 32 shall not apply to a municipality adopting, revising, or amending a charter under RSA 49-C or RSA 49-D ***unless that municipality adopts a budgetary town meeting or representative town meeting pursuant to RSA 49-D:3, II and III.***

5 Reference Change. Amend RSA 669:17, VI to read as follows:

VI. Elected budget committee members (RSA [32:2] ***32:15***).

6 Reference Change. Amend RSA 669:71 to read as follows:

669:71 Municipal Budget Committee. Vacancies on the municipal budget committee shall be filled in accordance with RSA [32:2] ***32:15, VII.***

7 Effective Date. This act shall take effect 60 days after its passage.

SENATOR COLANTUONO: I move that HB 615 be ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 196-FN, an act relative to the method for financing additional benefits for retirement system members. Insurance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: The Insurance committee votes ought to pass on the insurance bills to do with retirement. There are seven of them and they are coming down to Finance and we can get them all done.

Adopted.

Referred to the Division on Finance (Rule #24).

HB 197, an act relative to insurance fraud. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: HB 197 attempts to clamp down on insurance fraud. It is the result of a study committee review of ways to cut down on what seems to be a growing problem. There are two major components in the bill. Section one of the bill addresses the phantom victim where the mysterious victim makes claims months after the accident has occurred. Under this law, the names of all occupants of a vehicle involved in an accident must be reported. Section two strengthens the Workers' Compensation penalty of false representation and calls for stiffer penalities. This bill was unanimously supported by the committee and is backed by the insurance group as well as the trial lawyers.

Adopted.

Ordered to third reading.

HB 200-FN-A, an act relative to an actuarial audit of the New Hampshire Retirement System, paid for from retirement system funds. Insurance committee. Ought to Pass. Senator Shaheen for the committee.

SENATOR SHAHEEN: HB 200 does exactly what the title says that it does. It requires that there be an actuarial audit of the retirement system. There has never been one since the retirement system has been established. This audit would be paid for from the retirement system funds. I move ought to pass.

Referred to the Division on Finance (Rule #24).

Senator Disnard (Rule #42).

HB 262-FN, an act providing a 5 percent cost of living adjustment for teacher members of the retirement system and relative to when cost of living adjustments may be granted to retirement system members. Insurance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move adoption of the committee report.

Referred to the Division on Finance (Rule #24).

HB 341, an act relative to a small employer insurance availability act and standardized medical benefits forms. Insurance committee. Re-refer to committee. Senator Shaheen for the committee.

SENATOR SHAHEEN: HB 341 is a long and very complicated bill. There was a lot of testimony in opposition to the bill. There is also a fair amount of testimony in support of the bill. But everyone acknowledged that it is going to be impacted significantly by whatever comes out of Washington in terms of President Clinton's health care proposal. So the committee felt that it would be appropriate to re-refer the bill until we know what that does.

Committee report of re-refer is adopted.

HB 417-FN, an act providing a 5 percent cost of living adjustment for permanent policemen members of the retirement system and relative to when cost of living adjustments may be granted to retirement system members. Insurance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Referred to the Division on Finance (Rule #24).

HB 433-FN-LOCAL, an act providing a cost of living adjustment for Group I and Group II retirement system members. Insurance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Referred to the Division on Finance (Rule #24).

HB 440-FN, an act providing cost of living adjustments for certain employee members of the retirement system. Insurance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Referred to the Division on Finance (Rule #24).

HB 594, an act relative to medical and surgical benefits for Group I and Group II retired employees. Insurance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Referred to the Division on Finance (Rule #24).

HB 606-FN, an act authorizing employers subject to the Workers' Compensation law to establish managed care programs. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2550B

Amendment to HB 606-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Managed Care Programs. Amend RSA 281-A by inserting after section 23 the following new section:

281-A:23-a Managed Care Programs.

I. An employer, employer's insurance carrier or self-insurer that is subject to the provisions of this chapter may satisfy the requirements and provisions of RSA 281-A:23 and the employee's rights under that section by providing a managed care program which has been approved by the commissioner. A managed care program shall not be approved unless the commissioner finds that:

(a) The network or panel of health care providers is sufficiently comprehensive with respect to both geography and medical specialties, including reasonable access to treatment for injuries or personal injuries.

(b) The program provides for treatment and aids outside of the network or panel, if the necessary services or aids cannot be provided within the network or panel, of if emergency circumstances prohibit use of the network or panel, or in such other circumstances as the commissioner may find.

(c) That the program includes a process for determining professional qualifications of health care providers in the network or panel.

(d) That the program provides for acceptable quality assurance measures.

(e) That the program includes both in-patient and out-patient case management and rehabilitation case management.

II. No managed care program shall limit the right to a hearing under RSA 281-A:43, I, shall require as a condition of employment that any person engage in any practice or conduct outside of the course of employment, except in connection with and as part of treatment for an injury, or shall vary the methods for calculating weekly payments for disability compensation under RSA 281-A:28 or 281-A:31 or for calculating scheduled permanent impairment awards under RSA 281-A:32.

III.(a) In addition to approval by the commissioner as required under paragraph I, and except for approvals within the residual market made before June 30, 1995, approval of a managed care program shall require an affirmative vote of ratification of such approval by an advisory committee which shall consist of the following members:

(1) One member from the house of representatives, appointed by the speaker of the house.

(2) One member of the senate, appointed by the senate president.

(3) A representative of employers, appointed by the labor commissioner.

(4) A representative of workers' compensation insurance carriers, appointed by the labor commissioner.

(5) A representative of medical, hospital and remedial care providers, appointed by the labor commissioner.

(6) A representative of employees, who shall be appointed by the governor and executive council, which representative shall be chosen from a panel of nominees submitted to the governor by organized labor.

(b) Members of the advisory committee shall serve without compensation, except that legislative members shall receive mileage at the legislative rate. The legislative members shall serve terms coterminous with their terms of office in the legislature. The remaining members shall serve 2-year terms. A chairperson shall be chosen from among the members, and the chairperson shall call such meetings as are requested by the commissioner.

IV. A managed care program shall be deemed to have been approved by the commissioner unless, within 60 days after its filing with the commissioner, the commissioner makes a preliminary determination of noncompliance, specifying in writing the reasons why the program does not appear to conform to the requirements of paragraph I. The proponent of such program shall have the right to a hearing before the commissioner to contest the preliminary determination. A managed care program approved or deemed approved by the commissioner shall be submitted to the advisory committee within 5 days of such approval or deemed approval and shall be deemed to have been ratified by the advisory committee established under paragraph III unless, within 30 days after approval or deemed approval by the commissioner, the committee declines to ratify the plan, specifying in writing the reasons why the program does not appear to conform to the requirements of paragraph I. The proponent of such program shall have the right to a hearing before the committee to contest the committee's declination.

2 New Section; Employees Covered by Managed Care Program. Amend RSA 281-A by inserting after section 38 the following new section:

281-A:38-a Examination of Injured Employees Covered by Managed Care Programs. When application is made to the commissioner by any injured employee who is covered by a managed care program established in accordance with RSA 281-A:23-a, the commissioner may refer the injured employee to a medical facility, physician, or surgeon of such employee's choice for the purpose of conducting an examination and reporting the results to the commissioner. Upon written request, an employee shall be entitled to an expedited hearing on an application filed under this section. The physician, surgeon, or medical facility to which such referral is made shall receive a reasonable fee for services and reimbursement for necessary expenses, which fee shall be paid by the employer or the employer's insurance carrier.

3 Evaluation Report. Managed care programs approved in accordance with this act shall be the subject of an evaluation report prepared by the performance audit division of the office of the legislative budget assistant and submitted to the president of the senate, the speaker of the house, the governor, the commissioner of labor, and the commissioner of insurance on or before December 1, 1995. Such evaluation shall specifically include reference to compliance with the standards set forth in RSA 281-A:23-a, I(a)-(e).

4 Applicability. RSA 281-A:23-a as inserted by section 1 of this act shall apply to the residual market as of the effective date of this act. Notwithstanding section 5 of this act, RSA 281-A:23-a as inserted by section 1 of this act shall apply to the voluntary market and self-insurers effective January 1, 1994.

5 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill authorizes employers subject to the workers' compensation law to establish managed care programs. Such programs, however, shall be approved by the labor commissioner and such approval ratified by an advisory committee.

The bill also authorizes the labor commissioner, upon application by the injured employee, to refer such employee for an independent medical examination.

SENATOR HOLLINGWORTH: I am pleased to report HB 606 with the Insurance committee's amendment. This is an extremely important bill, and frankly, I don't remember too many others that have been subject to so much work by so many people. This bill represents a compromise that was hammered out by the committee with an enormous support and input by the organized labor, trial lawyers, insurance industry, medical providers, Insurance Department and the Labor Department as well as the Governor's staff. HB 606 is a balanced approach to the use of managed care in the Workers Compensation system. This bill authorizes, but does not mandate, the use of managed care programs in the voluntary market and for self insured employers. The bill also augments the managed care program currently underway in the residual market. If HB 606 passes, an injured employee will still have the right to choose his or her own physician; however, in most instances, the choice will be made from the network of health care providers approved by the Labor Commission and ratified by the Advisory committee. There are three opt out provisions of the bill; an injured employee can choose a doctor outside the network when the necessary treatment cannot be provided in the network, or if an emergency prohibits the use of the network, or in another situation where the Labor Commission approves. Those optioned out provisions protect the quality of care for injured employees. An injured employee can also ask the Labor Commission for an independent medical examination to be conducted by the physician of the employee's choice. Many believe that managed care is the most important tool to help control the ever increasing cost of Workers' Compensation. It will be done under HB 606 in a way that controls cost and protects the injured employee. I urge you to support the committee's report. The bill is a well balanced approach. We believe that many people have put a great time and effort into what we believe will help resolve a very serious problem.

SENATOR CURRIER: Senator Hollingworth, I had a number of constituents in the last four weeks regarding their increased premiums on workmens compensation, and they are all from towns in Hillsborough County that were under a test program under managed care. Could you tell me, I didn't have an answer for them and I haven't had a chance in the last couple of weeks because of other commitments to really find out an answer for them at this point, but how is it that piece of legislation will help cut the escalating Workers' Compensation cost?

SENATOR HOLLINGWORTH: Because as you know, managed care is one of the mechanisms where you can determine how much is spent on someones treatment. The doctors and the hospitals have agreed to take a certain percentage of cut while covering those people who they are seeing under workmens compensation that are involved in the managed care network.

SENATOR CURRIER: What would I say to these people who have just experienced a 15 to 35 cent increase in their premium when in fact they are in the test market for this managed care program? How do I tell them that this bill is going to be any better than the test that they have been involved in?

SENATOR HOLLINGWORTH: I am surprised to hear that they have found an increase in the pilot program. I am surprised that those people experienced an increase if they were in the residual market. That market,

yes, was having an experience of higher rates as well as everyone did in Workers' Comp. I think that this bill and 164 will address the problems that are facing Workers' Comp.

SENATOR BARNES: Senator Hollingworth, a couple of weeks ago in a newspaper that I saw where a 23 percent increase in Workers Compensation was looked at as a legitimate number that we are going to be faced with here in New Hampshire. Did you see that same article?

SENATOR HOLLINGWORTH: No, I am sorry, I didn't see that article and I am sure that that article was before the passage of 606 and 164.

SENATOR BARNES: Well that is correct. But that leads me to the second part of my question. Senator Currier sort of asked you it already. Do you have a percentage, can you give me a percentage of what the business people here in New Hampshire are going to see for a decrease if this amendment passes?

SENATOR HOLLINGWORTH: We have heard from people who are supposedly the experts out there that they are saying that there could be a decrease of anywhere from six to eight percent in HB 606 and possibly another three or four percent under 164. But I would not want to give any numbers because I am certainly not an expert. But that is what we had testified to us at both of those hearings.

SENATOR BARNES: I know numbers sometimes can do all sorts of wonderful things. This six to eight percent that you heard in committee, is that off of the 23 or is that besides the 23?

SENATOR HOLLINGWORTH: I think that it is over last year's. So I would presume that is off of that number; again, I think that you have to look at the whole package. We have no idea of knowing what is going to happen. I certainly think that with the safety program in place and the fraud unit in place, we were hoping for considerably more in savings.

SENATOR BARNES: Don't you think that this is an important enough issue that we should have, or some of the experts somewhere have some real hard numbers. This is a tremendous problem for the business community as well as the people who collect Workers' Compensation. Don't you feel that we really should have some really hard numbers so that we don't pass something that is going to do nothing?

SENATOR HOLLINGWORTH: Senator Barnes, I think that we have to take . . . after all of the testimony that we have heard in the months that this bill, 606 and 164 have been out there, and the testimony in support of this legislation from the experts, that we do have to believe that they think that these two bills are the best that we can do right at the moment in time. I think that we should keep our pulse on that and continue to look for changes of bringing down Workers' Compensation TAPE INAUDIBLE.

SENATOR SHAHEEN: I just wanted to add to what Senator Hollingworth said that part of the way that 606 addresses cost savings is by through an effort to get people out of the assigned risk pool. One of the things that has driven the cost of Workers' Compensation up so dramatically in the last several years is that the people who are in the residual market, that assigned risk pool, have grown larger and larger so that it amounts to about 33 percent of the total pool. What HB 606 envisions is that by mandating managed care it will move people out of that assigned risk pool and back into the voluntary market and that will help reduce cost.

SENATOR BARNES: Senator Shaheen, would you believe that five years ago a small business in Raymond, New Hampshire was paying approximately $400 a month for Workers' Comp and that small business isn't in an assigned pool and the last payment was $975 just five years later for the same coverage, would you believe that?

SENATOR SHAHEEN: I will.

SENATOR BARNES: It's kind of sad.

SENATOR SHAHEEN: It is, but I would just point out that 606, at least for the time being, until it addresses the whole market, it only addressess those people who are in the assigned risk pool.

Amendment adopted.

SENATOR COLANTUONO: I rise to offer floor amendment #2797. I, like every other Senator in this body, followed the Workers' Compensation debate this session very closely and I have had a lot of calls and letters from constituents and non constituents about this issue. Relative to 606 the one concern that I have heard from almost every person who has contacted me was that they wanted to retain the right to choose their own doctor which is a right that individuals have had under our Workers' Compensation system for many years. As far as I know, it is a right that they have had ever since the system was adopted. It set forth in RSA 281-A:23 right now and it plainly says that, "any worker in the Workers'Compensation system has the right to choose his or her own physician for treatment". Senator Hollingworth gave me a copy of the agreed upon amendment to 606 after the agreement was struck several weeks ago and asked me to look it over and see if I had any comments or suggestions and so forth and I did that. I looked it over and I determined that there was this piece missing which, I believe, is necessary to make a good bill an even better bill and to protect the right of every person in New Hampshire to continue to have some choice of their physician. So I came up with some language last week. I would like to make everyone aware of how I came up with this language is that I contacted the Labor Commissioner, Richard Flynn, and told him of my idea and we sat down together and drafted this language together. It says very simply that any injured employee covered by a Workers' Compensation managed care program pursuant to RSA 281-A:23-A, which is the new law that we just passed, "shall have the right to select his or her own physician provided that the physician agrees to accept the conditions and compensation of the managed care program". That was the language that I insisted upon having for the protection of the whole program. The reason that I did this is because I have seen many cases in Workers' Compensation, I have represented people who have Workers' Compensation injuries and I was concerned that we are setting up a dual system here by passing this bill. Because as Senator Hollingworth said, "no employer is required to adopt a managed care program, they can still get traditional insurance through an insurance company". So there is a possibility that we are going to have a dual system in this state where employers working for some companies will have the right to choose their own physician under current law, section 23, whereas employees working for other companies that have a managed care program won't have an absolute right to choose their own physician. They are going to be limited to the physicians who are part of the managed care program or unless they get a special waiver from the Department of Labor. I can forsee situations where if my amendment doesn't pass, a person who has been going to the same doc-

tor for 20 or 30 years and has great trust and respect for that doctor and believes in that doctor, could be forced by this managed care program to go to some doctor that they have never met, don't know, don't trust, may not be as experienced or qualified as their own doctor and I don't think that we should be putting our citizens through that into that dilemma as long as that person's own doctor is willing to accept the same compensation and conditions as the managed care program wants to impose for cost savings purposes. I can think of another case that I had myself where a person was in a very serious car accident. Instead of being treated by local orthopedic surgeons for the particular type of fracture he had, he was sent to an orthopedic surgeon in the city here of Concord who was a noted national expert of treating this particular type of injury. Now every person who has an injury or illness or a disease wants to be treated by the very best, and if that expert up here in Concord had not been part of the managed care program that client belonged to, he would have been foreclosed from getting the very best care that is available here. So I think that it is essential to make a fair bill, a bill that our constituents will approve of and a bill that is in their best interest. I believe that we have to pass this floor amendment. Now I was told that because I brought it in last week and the bill had already been execed that it was basically too late to do anything because the deal had already been struck. Now that is the first time I have ever heard in three years that I have been here that a good idea is not going to be brought forward in this body because a deal had already been struck. I think that that is a bad way of legislating. If an idea, is a good idea, it should be accepted no matter when it is brought in, even on the day of the vote. So I would hope that you would all support this in the interest of your constituents and vote yes on the floor amendment. Thank you.

Senator Colantuono offered a floor amendment.

2797B

Floor Amendment to HB 606-FN

Amend the bill by inserting the following after section 4 and renumbering the original section 5 to read as 6:

5 New Paragraph; Employees Under a Managed Care Program. Amend RSA 281-A:23 by inserting after paragraph I the following new paragraph:

I-a. Any injured employee covered by a workers' compensation managed care program, pursuant to RSA 281-A:23-a, shall have the right to select his or her own physician, provided that the physician agrees to accept the conditions and compensation of the managed care program.

SENATOR W. KING: I rise in opposition to the amendment. I would like to say just a couple of quick things. When we first organized the Senate this year a lot of us believed that the organization of the Senate was a means whereby we could deal with very difficult issues in a nonpartisan way. That we could address policy issues outside the realm of partisan politics. I think that this particular bill is a classic example of what we can do when we are willing to work together. Senator Hollingworth, Senator Shaheen, Senator Fraser, Senator Delahunty, Senator Blaisdell, a lot of people worked very hard to craft this compromise so that we could send to the Governor a bill that the Governor could live with, that this Senate could be proud of, that the House of Representatives could live with, that all of the players that were involved in it, all of those players came to the table, everybody was given an opportunity to voice their con-

cerns. They were asked to put their positions aside and talk about the interest of the constituencies that they represent and to help us craft a bill that was going to be able to provide managed care and to reduce the cost of workers compensation. We have put together, I think, a very hard fought compromise that we should not damage by adding this additional amendment. The fact is that under the compromise agreement that we have before us today, an individual can choose their own physician so long as their own physician is a part of the managed care program. There is absolutely no reason, if as the amendment suggests that the pay is going to be the same, either way, that a physician would not want to be a part of the managed care program. Assuming that that physician was willing to accept the cost associated with the payment through the managed care program. Additionally, there is the possibility of going to a persons own physician on waiver from the department if there is an appeal made by the individual. So the individual has several opportunities to utilize their own physician already. This is a hard fought compromise and everybody has agreed to it. I would suggest that we ought to stay with that and vote against the amendment.

Question is on the floor amendment.

A roll call requested by Senator Blaisdell.

Seconded by Senator Colantuono.

The following Senators voted Yes: Lamirande, Lovejoy, Currier, Roberge, Wheeler, Pignatelli, Colantuono, Podles, Russman.

The following Senators voted No: W. King, MacDonald, Fraser, Disnard, Blaisdell, Baldizar, McLane, Barnes, J. King, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas: 9 - Nays: 14

Floor amendment fails.

Ordered to third reading.

Senators Currier and Lamirande in opposition to HB 606.

HB 612-FN-LOCAL, an act relative to changes in the maximum weekly benefit amount for unemployment compensation. Insurance committee. Ought to Pass. Senator Shaheen for the committee.

TAPE INAUDIBLE.

Referred to the Division on Finance (Rule #24).

HCR 14, a resolution: urging members of Congress to oppose aspects of the proposed federal energy tax which discriminates against heating oil consumers in the Northeast and Mid-Atlantic regions. Interstate Cooperation committee. Ought to Pass. Senator Lovejoy for the committee.

TAPE INAUDIBLE.

Adopted.

Ordered to third reading.

HB 476, an act establishing the crime of stalking. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2641B

Amendment to HB 476

Amend the title of the bill by replacing it with the following:

AN ACT

establishing the crime of stalking and authorizing the state to enforce domestic violence protective orders issued in other states.

Amend RSA 633:3-a, II as inserted by section 2 of the bill by replacing it with the following:

II. A person is guilty of stalking if such person:

(a) Purposely or knowingly stalks another as defined in RSA 633:3-a, I(d)(1) or (2);

(b) Purposely, knowingly or recklessly stalks another as defined in RSA 633:3-a, I(d)(3), (4) or (5); or

(c) Purposely or knowingly intimidates another and makes an explicit or implicit threat against another.

Amend the bill by replacing all after section 3 with the following:

4 Statement of Purpose. The general court recognizes that domestic violence is an overwhelming problem throughout the United States. It is the policy of the state to protect the peace and security of all residents of the state. In furtherance of this policy, it is the intent of the general court that protective orders issued in other states, territories and possessions of the United States shall be given full faith and credit throughout the state.

5 Violation of Protective Orders; Reference Added. Amend RSA 173-B:8, I.(a) to read as follows:

I.(a) Irrespective of whether the plaintiff chooses to pursue the contempt remedies in paragraph II, when a defendant violates either a temporary or permanent protective order issued ***or enforced*** under this chapter by committing assault, criminal trespass, criminal mischief or another criminal act, peace officers shall arrest the defendant, detain the defendant pursuant to RSA 594:19-a and refer the defendant for prosecution. Such arrests may be made within 6 hours without a warrant upon probable cause whether or not the violation is committed in the presence of a peace officer.

6 New Section; Foreign Protective Order; Full Faith and Credit. Amend RSA 173-B by inserting after section 11-a the following new section:

173-B:11-b Foreign Protective Orders Enforceable.

I. Any protective order issued by any other state, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia shall be given full faith and credit throughout the state, in all districts and counties provided that such an order is similar to a protective order issued under RSA 173-B:4, I(a)(1)-(4) or an order issued under RSA 458:16, I, II or III.

II. A foreign protective order as defined in paragraph I shall be enforceable in this state as long as it is in effect in the issuing state.

III. A person entitled to protection under a foreign protective order as defined on paragraph I may file such order in any district court by filing with the court a certified copy of the order. Such person shall swear under oath in an affidavit to the best of such person's knowledge that the order is presently in effect as written. Upon inquiry by a law enforcement agency the clerk of the district court shall make a copy of the foreign protective order available.

IV. A peace officer may rely upon a copy of any protective order issued under this chapter, RSA 458, or a foreign protective order as defined in this section, which has been provided to the peace officer by any source.

V. Law enforcement personnel may rely on the statement of the person protected by the order that the order remains in effect.

7 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill establishes the crime of stalking.

This bill also authorizes the state to enforce domestic violence protective orders issued in other states.

SENATOR HOLLINGWORTH: Tape inaudible.

SENATOR WHEELER: Tape inaudible We hope that in this statute that the person wouldn't have to be following someone, it could simply be harassing phone calls or intimidating things from a distance, is that correct?

SENATOR HOLLINGWORTH: Yes.

SENATOR WHEELER: Thank you.

Amendment adopted.

Ordered to third reading.

HB 556-FN-A, an act offering a reward for the apprehension of former Newport District Court Judge, John C. Fairbanks, and making an appropriation therefor. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President and Senators, HB 556 authorizes a $20,000 reward for information leading to the apprehension and conviction of former judge Fairbanks. It also requires the Department of Justice to file a claim in federal bankruptcy court to recoup the reward upon Fairbank's apprehension. The appropriation lapses in 1995. The committee recommends ought to pass.

SENATOR BARNES: Senator Podles, where does the state stand on line in the bankruptcy proceedings? Are we on the top of the list or are we in the middle or are we at the bottom?

SENATOR PODLES: We really don't know how we are going to be able to recoup that money. I guess they will have to judge on the creditors. The creditors might come first before we can get that. There is no way of knowing, Senator, we may not get it at all if there isn't any money left.

SENATOR BARNES: Can you tell me what the committee vote was on this one?

SENATOR PODLES: Yes, I can. The committee vote was unanimous.

SENATOR BARNES: Thank you.

Adopted.

SENATOR RUSSMAN: I guess I am concerned about us giving out rewards to find people who are crooks. You know maybe what he has done ought to be a capital offense, I do have a problem with that and I think that is probably what it should be, frankly. But as far as us singling him out or anybody else out, there are other people that have done frankly, things that you know, to other people in terms of rapist or what have you that have done some pretty serious crimes and as far as I know, we aren't offering rewards for their capture. I don't know why this fellow should get any special attention anymore than these other people who have committed some pretty serious crimes. I think that we ought to be doing this for all of these criminals . . . this is going to set a precedent whereby we just start selectively deciding that we are going to put bounties on one person or another. This person here what he has done is not good. But certainly spending money to try and find him or give rewards out is a dangerous precedent.

SENATOR DISNARD: Mr. President, to the people in my area, this bill is very important. While the previous speaker said that in his opinion it might not be, it is very difficult to explain to those elderly people that were bumped out of their savings that the Senate of the State of New Hampshire does not have sympathy for them or is willing to help them. I hope that this bill passes.

SENATOR BARNES: Senator Disnard, would you believe that this morning there was a meeting of the Economic and Insurance committees get together to talk about this organization that went bankrupt and did an awful job on a lot of little guys in business. People came up in front our committees today telling us how horribly they were bilked. So would you be agreeable to putting a bill in to bail those folks that were bilked out of this outfit that did fancy things?

SENATOR DISNARD: Sir, I think that you misunderstood this bill. This bill isn't bailing anybody out. This is offering reward to help apprehend this gentleman, this person, excuse me.

SENATOR BARNES: If I could reword it then. Would you be agreeable to a bill that would help apprehend and find out where the money is that disappeared from this outfit?

SENATOR DISNARD: Sir, I have learned long enough that when you ask a question to know all sides of it, and I would have to read the entire bill before I gave you an answer.

SENATOR BARNES: Thank you, Senator.

Ordered to third reading.

Senators Barnes, Bourque, Fraser and Russman in opposition to HB 556.

HB 221-FN, an act modifying the Fish and Game Department's eminent domain powers. Wildlife and Recreation committee. Ought to Pass. Senator Wheeler for the committee.

SENATOR WHEELER: The Wildlife and Recreation committee unanimously supports that this bill pass. We were a little nervous about it. We understand that eminent domain is an awesome power and we respect that. And we also know that the Fish and Game Department needs the eminent domain changes to help its lakes and access program. We ask that this bill be ought to pass.

Adopted.

Ordered to third reading.

HB 575-FN, an act limiting dog training and authorizing the Executive Director of Fish and Game to issue permits for the use of bear dogs to control agricultural and property damage. Wildlife and Recreation committee. Majority Report: Ought to Pass with Amendment. Senator Lovejoy for the majority. Minority Report: Inexpedient to Legislate. Senator Cohen for the minority.

SENATOR COHEN: Last week's version of 575 was a compromise from the original House Bill. It called for permits to be given between August 31 and September 15 to licensed hunters during the closed season for the training of dogs to hunt bear during open season which is September 15 to October 31. Many hunters support the bill, the version that we had last week. It was truly a pro-hunting bill. I would like to quote Representative Gene Chandler who says that, "HB 575 as amended as we had

it last week, is a good bill, it represents a fair compromise and is a measure which should be enacted into law. I write you not only as a lifelong hunter, State Representative, but also as Chairman of the Carroll County Delegation. A poll of our 13 member delegation, 12 support the measure", and this in a county well known for its bear hunting, he concludes, "I hope that you and your colleagues will look favorably upon passage of HB 575 as amended". Of course it has been amended since then. This is the 1990's and public support for hunting is going more tenuous with the passage of time. Hunting deserves public support, we must keep it as a viable and valuable tool for wildlife management as well as for its unique properties for the enjoyment of the wilderness and of nature. The public justifiably demands of hunters that rules of fair chase and sportsmanship be in place. It is the legitimate role of the legislature to set the moral and ethical tone to keep hunting supported and appreciated. Over the years guns and instruments for hunting have improved greatly. Yet we are still careful to maintain rules to insure that the sport of the hunt is not eroded. Sportsmanship can best be defined as a voluntary limit on the use of new and improved armaments and instruments. Right now, bear hunters using dogs rely on telemetry, the use of radio signals from the dogs to tell them where the bear is. So here is the way that it works. In the summer months the dog training period in question, the dog could locate a mother bear and separate her from the den and her cubs and run her and chase her for a number of miles until she is exhausted and runs up a tree. You should remember that bears carry a lot of fat and are covered by thick fur and have no sweat glands. At first the bear would run many miles. But in dog training the dog is also trained. So in subsequent training seasons, shall run shorter and shorter distances knowing that when she runs up a tree, the chase is over. So when hunting season is open, all the hunter has to do is to follow his radio signal in his air conditioned car and find the exhausted bear in a tree and shoot it. Now I ask you, is this sportsmanlike? Meanwhile, those cubs that haven't already been lost during the mother's absence in the training season are now left to fend for themselves well before they are able to. The aim of the bill was simply to limit the time the dogs could be used. Under the new amendment that will be described, training can occur for eight weeks prior to the hunting season; again, the aim of this bill was to safeguard the public image of hunting. The future for hunting is secure so long as it shows the public its soul. The public is willing to accept and support hunting if it is sportsmanlike. The newly amended version which changes it from August 31 to July 15 is a significant departure and is a major compromise. Thank you.

SENATOR LOVEJOY: Mr. President and members of the Senate, we will speak in opposition to the Cohen amendment and in favor of the committee majority report that the dates for dog training begin on July 15. Let me point out to you that this is a compromise. It is a compromise that the sportsmen have made over the years. The original bill now gives up March and April. This way, they are also giving up half of July. So they have given up two and a half months. A couple of years ago they gave up the month of June. Now since 1977 the effort to end dog use in bear hunting has continued. In that year it was stated that, "we will get the hounds out of the woods". Many hunters wondered then and still do if this meant just bear dogs or all dogs and if this is an effort to end dog use for all forms of hunting. The bills throughout their history have been introduced year after year by the same people. The bear dog hunters have constantly gone out of their way to cooperate with requests to make con-

cessionary moves and to clean up their sport to the point that during this year's testimony and under direct questioning, there were no complaints made by any of those who oppose the use of bear dogs more recently than six years ago. In 1985 in fact, the New Hampshire Bear Hunters Association asked the Fish and Game to take bear hunting out of deer season and to voluntarily give up their sport in September. This bill, HB 575-FN in its fiscal note states, "an act prohibiting bear dog training". The amended bill does just that before this most recent amendment. It says that, "no training permit shall be valid from March 1 through August 31". Well you can't train your dogs before March because the bears are still in their dens and you can't train your dogs from September 1 through the 19th even though this is bear season because dogs are prohibited in the woods. Right now, before this bill, dogs can be trained from July 1 through the end of August. Now fair is fair and wrong is wrong. This bill does not restrict the training of bear dogs as a sport. In fact it ends it. This bill was approved by some major and dependable organizations in our state. Organizations such as Farmers Association who call on the bear dog owners from time to time in order to combat crop and livestock damage, like the Fish and Game Department who often use bear dog owners in order to track, band and identify the New Hampshire bear population, like the 21,000 members of the New Hampshire Gun Owners Association and like the Wildlife Federation who recognizes the importance of this necessary tool in wildlife management and as well as by the New Hampshire Bear Biologists who strongly favors a bear dog training season. Bear dog use takes only a small percentage of the bear kill in the state every year, about 15 percent in 1992. There were 39 bears taken with dogs, 15 were taken by cars. Deer hunters killed 50 bear in 1992. So of the 263 bear killed in 1992, only 39 were a result of bear dog hunting. Now let's be fair. We all recognize that those who own and train bear dogs realistically comply their sport during their hours off from work, Saturdays and Sundays as a rule; and then again, that time is limited by such things as weather. Asking for a training season for July 15 through August is really asking for just about 20 days of training time. Let us join in with those farmers, the New Hampshire Bear Biologists, those Fish and Game professionals, and those Wildlife Federation members and support this compromise, the committees report that bear dog training would began on July 15. Thank you.

2813B

Amendment to HB 575-FN

Amend RSA 207:12-a, I as inserted by section 1 of the bill by replacing it with the following:

I. Any person who is licensed to hunt within the state shall be issued a training permit for the training of bird dogs and trail or tree hounds during the closed season on any wildlife, except deer, moose, caribou, elk, lynx, cougar, and turkey, upon application and the payment of a fee of $5. No training permits shall be valid for the period of [May] ***March*** 1 to [June 30] ***July 15,*** to train bear dogs, except that holders of a training permit may train dogs upon land owned or leased by the permittee, or upon land for which the permittee has written permission of the landowner during this period. Such written permission shall be carried on the permittee's person while training. Training conducted pursuant to this exception shall be permitted only on wildlife legally possessed by the permittee and if released, such releasing shall be in accordance with RSA 207:14 and 207:14-a. Notwithstanding the provisions of this paragraph, field trials shall be permitted pursuant to RSA 207:13.

SENATOR LAMIRANDE: I am opposed to the bill. That is why I am rising, to speak in opposition to the committee amendment which is before us. I would just like to make a few statements and a few comments on this, because it seems like this bear dog training bill, it affects Coos county area, drastically. I would like to point out that in 1983 the black bear was officially recognized in the state as a big game species. This was due to the bears' increased popularity with the sportsmen. In 1985 the Fish and Game Department had found from the accumulated data from their bear management program, and they do have a bear management program. The average male bear was 3.04 years of age and the female 2.64 years of age. These were concerning statistics considering the female doesn't become sexually mature until 2-1/2 to 3-1/2 years and the male at two to three years of age. The information obtained about the bear brought about major changes in the bear season. The bear season was removed from the regular deer season and the season to run dogs for bears was shortened by one month. The bear season was also restricted to the northern three counties. The rest of the state being closed to the taking of bear, Coos, Grafton and Carroll counties remain the home and primary range of the majority of today's bear population. All of these changes took place without opposition from the sportsmen that hunt bear-because our resources were proven to be in jeopardy. The use of bear dogs to run bear has no negative effect on the health of the bear. Houndsmen are allowed to train their dogs during some spring and summer months prior to the season. This speculation and accusation that dogs hurt and are permanently separating cubs from their mother during training are false. The Bear Biologists have data proving this. The troubled areas have been with land owners not wanting bear dogs on their property. These problems have been resolved. There have not been any complaints of any violations of bear dog hunting in New Hampshire for over two years. From the biological standpoint, both baiting and training of dogs are very positive tools when managing a desired amount of bear to be taken without over harvest. The Fish and Game Department is forced to introduce a bear season back into the entire deer season when uncontrollable numbers of bears, especially females, would be killed. If more legislation is passed that does not work in unison with biological data, this is what you will see happening. In 1988 the Fish and Game Department was granted permanent authority to regulate the bear harvest. They can now change rules, regulations, and the season length as they feel is necessary to maintain sound bear management. There is no need for further legislation pertaining to what is best for the bear. That is why the Fish and Game Department was granted authority because they know what is best. These letters that I have in opposition to this bill are from the state of New Hampshire Fish and Game Department, the New Hampshire Wildlife Federation. The New Hampshire Fish and Game Department stated that they wanted to restate their position in opposition to HB 575. The arguments that have been raised in support of this bill are emotional and not substantiated by scientific fact. I would point out that the added regulations now in place against bear dogs, preventing them from running bears has increased the number of destructions of nuisance bears. HB 575 is unfounded and uncalled for, without any justifiable facts to support it. The resource is the most important issue and should be considered before any changes are made. Since 1989 dog hunting and baiting for bear have been attacked annually, when they are the most manageable method of the bear harvest program which continues to

work very well. My concern is the black bear resource. I would suggest that this bill be inexpedient to legislate. Therefore, I am in opposition to the bill as amended.

SENATOR MCLANE: I rise in great disappointment to accept the amendment because it is better than what we have. But if anyone's idea of a compromise is to go a month and a half in the wrong direction, I would like to object. If you could give this to me, I want to show you what we are talking about. There it is. That is a cub on July 15. If you think that that cub is old enough to be left wandering around with a bunch of dogs when its mother climbs the tree and stays there until the dogs go away in the heat of the summer, then you, as I, will probably vote for the amendment, but wonder if perhaps a better compromise could not have been made.

SENATOR WHEELER: Senator McLane, would you believe that we spoke to the New Hampshires Bear Biologist and that he has told us that the cubs are born in the den usually at the end of January and that the adult cubs come out of their den in mid March. And that a bear cub can survive without its mother at 18 pounds when they are no longer dependent upon the mother for food, in mid or late summer, sometime between July 1 and July 15 and that is why we took the July 15, because the baby bear cubs will be fine?

SENATOR MCLANE: I would say first of all that we are talking about a 20 pound cub. And the evidence that I read from the speech that Senator Roberge had was that a 20 pound bear on the 15th of July was still in great danger because of the heat and because of the time. I would just like to say that this is on the July 15, a better compromise would have been August 1.

SENATOR BALDIZAR: Senator Lovejoy, is there anywhere in the amendment or in the bill a definition for sport or sportsmanship?

SENATOR LOVEJOY: The bill merely addresses the period of time that a bear hunter, an owner of dogs who hunt bear and train their dogs, and training their dogs is a period of time when they can go out without shooting the bears and let the dogs get in condition or to get trained in the sport of bear hunting. So I don't know how you would apply the term, 'sportsmanship'. I guess I don't understand it. I understand from the testimony at the hearing that in most cases during the hunting season the bear isn't shot. It is just the sport of hunting the bear and the bear is freed and in most cases they are let loose. I think that that is probably borne out by the fact that only 39 were taken last year with hunting dogs. A deer hunter killed a whole lot more bear than bear dog hunters have. In fact, automobiles killed half as many.

SENATOR LAMIRANDE: Senator Lovejoy, would you believe that I feel the laws in place right now are adequate, but that I also feel that if the compromise is in agreement with the hunters and all concerned, then I will support the bill as amended?

SENATOR LOVEJOY: I thank you very much. And yes, I would believe that. And may I just answer this way, that if Senator Cohen's motion of inexpedient to legislate is what he intends to do, then I will support his motion as inexpedient because that will leave it the way that it is right now. So if that is your intent, then I will support that inexpedient motion. If I may ask a question of Senator Cohen?

SENATOR LOVEJOY: Senator Cohen, your motion of inexpedient to legislate means that we would stay exactly the same way that we are now and the whole bill would be defeated as we had asked originally. Is that your intention?

SENATOR COHEN: My intention is to somewhat reluctantly, not somewhat reluctantly, but reluctantly, agree to the compromise and suggest a vote of ought to pass with the amendment of July 15.

SENATOR HOLLINGWORTH: Senator Wheeler, I know nothing about bear hunting. In fact I just said to Senator Fraser the only thing that I know about bear is the hug that I look for. I tried to get one from Leo but he wouldn't give in. Those little bears that are bear cubs that Susan has, this is just training right? You have dogs, you let them out, they chase the mother up the tree. While they have the mother up the tree do these baby bears get chased by the dogs as well or what happens to them?

SENATOR WHEELER: They can climb trees too, Senator.

SENATOR HOLLINGWORTH: At that age?

SENATOR WHEELER: Yes.

SENATOR DISNARD: Senator Lovejoy, how many people from the public, not legislators, spoke against this bill?

SENATOR LOVEJOY: In the hearing, sir, there was one person.

SENATOR DISNARD: And how many years did she say since she has had a complaint on her property?

SENATOR LOVEJOY: We asked both the member of the public as well as those people who are in the legislature who are speaking in favor of the bill. The most recent occurrence that was objectionable and the closest date was six years ago.

SENATOR DISNARD: So in essence, in the last six years there have been no complaints from the public?

SENATOR LOVEJOY: That is what the testimony indicated.

SENATOR DISNARD: Thank you.

SENATOR RUSSMAN: Senator Cohen, would you believe that this is an agreed-to situation and that there is really no need for further discussion. The votes are there and it is going to pass, and we have a lot of other important business to come before us? We really shouldn't have to stay here until midnight?

SENATOR COHEN: Most assuredly I would agree with Senator Russman. Thank you.

Recess.

Out of recess.

Committee amendment adopted.

SENATOR W. KING: I have a very important economic initiative, it deals with the issue of international trade as it pertains to bears in the state of New Hampshire. It is in keeping with the greatest traditions of New Hampshire's thrifty tax structure and the way in which we obtain revenues in the state. This bill I finally refer to is the GallBladder amendment. What this does is to require those who shoot a bear to turn in itsgallbladder at the registration station. The bear's gallbladder, not their own. And that the gallbladder would be saved and auctioned with all of the other gallbladders to the highest bidder. Probably most likely from the Pacific rim somewhere at the end of every year. Now there is precedent for this. As you all know there was a great deal of attention focused last year on the road kill auction where all of the animals that have been

picked up by the Department of Transportation along the side of the road and put in a big freezer and then they had a auction at the end of the year. Now that auction didn't bring very much money, but this auction would bring a considerable amount of money. In fact, given what a bear's gallbladder brings on the oriental market, we figure that this would raise somewhere between $80,000 and $100,000 for the state of New Hampshire. If Senator Lamirande would like to offer an amendment that the target is to fund kindergartens, I would be most pleased to support it.

Senator W. King offered a floor amendment.

2732B

Floor Amendment to HB 575-FN

Amend the title of the bill by replacing it with the following:

AN ACT

limiting dog training and authorizing the executive director of fish and game to issue permits for the use of bear dogs to control agricultural and property damage and requiring the sale of bear gall bladders to countries in the Far East.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 6.

3 Statement of Purpose. The general court finds that foreign trade contributes significantly to the strength and growth of the economy of New Hampshire. In particular, the general court finds that more extensive commercial relationships with the expanding economies of the Far East will foster economic prosperity at home and democratic progress abroad. Therefore, the general court resolves that, in the spirit of enriching the trading relationships between New Hampshire and the Far East, an appropriate and promising exchange of commodities be initiated by sections 4 and 5 of this act.

4 Surrender of Bear Gall Bladders Required. Amend RSA 208:22, VI to read as follows:

VI. Any person who kills a wild bear pursuant to this section shall report the kill in accordance with rules adopted under RSA 208:22, I. ***Upon reporting the kill, such person shall surrender the wild bear's gall bladder to the department.***

5 New Section; Sale of Wild Black Bear Gall Bladders. Amend RSA 208 by inserting after section 22 the following new section:

208:22-a Sale of Wild Black Bear Gall Bladders. The executive director shall request bids annually for wild black bear gall bladders from the appropriate agencies of the Peoples' Republic of China, Taiwan and Japan and sell them to the highest bidder.

AMENDED ANALYSIS

This bill shortens the period during which dog training permits are valid.

This bill authorizes the executive director to issue a special permit for the use of bear dogs to control agricultural and property damage.

This bill also requires hunters who kill a black bear to surrender its gall bladder to the fish and game department and requires the executive director of the fish and game to sell the gall bladders to the Peoples' Republic of China, Taiwan and Japan.

SENATOR MCLANE: Senator W. King, it has often been said that our tax structure in this state is beer, butts, booze, bed and bellies and bets, to which we have just added the bet tax which is busted businesses and now you want to add bear bladders, correct? Is that enough 'b's' for you?

SENATOR W. KING: Yes, it is all 'b's.

SENATOR COLANTUONO: Senator King, can't this subject be handled by the eminent domain bill that we just passed by Fish and Game by which they declare this state property?

SENATOR W. KING: I am not entirely sure. But I think that in the best interest of economic responsibility that we ought to move on it.

SENATOR BARNES: Senator King, this is on a serious note. I am a very serious person. If this issue is passed, I am curious, does it say in your amendment how these gallbladders are preserved and the proper method to do that? Is it going to cost the state more money to put in more whatever it is that we would need to preserve them?

SENATOR W. KING: As you know, we have a very large freezer that we use for the preservation of road kills so that we can auction them off at the end of the year. If in fact these things have to be frozen, they can be frozen in the same freezer.

SENATOR BARNES: On a serious note, I don't know anything about bear gallbladders, I don't know anything about my own gallbladder, but perhaps the freezer isn't the way that you are supposed to hold onto these things. I mean, is that addressed? If you pass this amendment and we have a bunch of gallbladders that go bad and we can't use them, that is kind of stupid isn't it?

SENATOR W. KING: I have all of the faith in the world in the ability of the Fish and Game Department to determine what is the best way to preserve gallbladders for sale on the international market.

Question is on the floor amendment.

A division was requested.

Yeas: 4 - Nays: 15

Floor amendment fails.

Ordered to third reading.

HB 105-FN, an act removing the requirement that the state inspect meat by making agriculture commissioner's authority in such matters discretionary. Public Affairs committee. Inexpedient to Legislate. Senator Delahunty for the committee.

SENATOR DELAHUNTY: I move the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 275, an act allowing towns to create special funds for highway expenditures. Public Affairs committee. Ought to Pass. Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I move the committee recommendation of ought to pass.

Adopted.

Ordered to third reading.

HB 280, an act relative to zoning requirements for family day care homes. Public Affairs committee. Re-refer to the committee. Senator Roberge for the committee.

SENATOR ROBERGE: I move the committee report for re-referral.

Committee report of re-referred is adopted.

HB 559, an act allowing a customer to terminate service from a water utility. Public Affairs committee. Ought to Pass with Amendment. Senator Barnes for the committee.

2740B

Amendment to HB 559

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Termination of Water Service. Amend RSA 362:4 by inserting after paragraph III the following new paragraph:

IV.(a) Any customer of a water utility shall have the right to terminate water service and secure water from an alternate source, if the customer can demonstrate the ability to comply with the requirements of RSA 485-A:29 and RSA 485-A:30-b, and the administrative rules adopted to implement these sections.

(b) Any covenant in a deed or contract that restricts the right to terminate water service from a water utility or in any way limits that right, shall be void as against public policy.

2 Applicability.

I. The provisions of RSA 362:4, IV(a) shall not apply to a municipal corporation furnishing water as provided in RSA 362:4, III(a).

II. The provisions of RSA 362:4, IV(b) shall apply only to contracts made or deeds executed after the effective date of this act.

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill allows a customer of a water utility to terminate service and secure water from an alternate source, if the customer can meet certain sewage disposal system requirements for plans and specifications and protective well radii.

SENATOR BARNES: I move ought to pass with amendment as recommended by the committee.

Amendment adopted.

Ordered to third reading.

HB 633, an act repealing inactive study committees and extending the reporting date for certain study committees. Public Affairs committee. Ought to Pass with Amendment. Senator Lovejoy for the committee.

2387B

Amendment to HB 633

Amend the bill by replacing section 15 with the following:

15 Former Members to Continue to Serve on Certain Study Committees. To the extent possible, the committee members appointed to the following committees whose reporting dates are extended in sections 2, 5, and 6 of this act shall continue to serve on their respective committees until November 1, 1993:

I. The committee members appointed to the committee to study the effects of substance abuse pursuant to 1992, 205:1.

II. The committee members appointed to the committee to study head injury cases in New Hampshire pursuant to 1992, 87:1.

III. The committee members appointed to the committee on gender equity in athletics pursuant to 1991, 267:1 as amended by 1992, 84:1.

16 Effective Date.

I. Section 1 of this act shall take effect July 1, 1993.

II. The remainder of this act shall take effect upon its passage.

SENATOR LOVEJOY: I move the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 147-FN-A, an act establishing a committee to study the future and direction of the New Hampshire State Hospital grounds and making an appropriation therefor. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator Baldizar for the committee.

2737B

Amendment to HB 147-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a committee to study the future and direction of the New Hampshire state hospital grounds and making an appropriation therefor and relative to involuntary emergency admissions.

Amend the bill by replacing section 7 with the following:

7 Statement of Intent. The purpose of section 8 of this act is to protect the public safety and provide appropriate medical and rehabilitative services to the mentally ill. It is recognized that the behavioral manifestations of mental illness may occasionally result in injury to the afflicted as well as to others with whom they may come into contact. It is the intention of this act to prevent such injuries.

8 New Paragraph; Involuntary Emergency Admissions. Amend RSA 135-C:28 by inserting after paragraph II the following new paragraph:

III. When a peace officer observes a person engaging in behavior which gives the peace officer reasonable suspicion to believe that the person may be suffering from a mental illness and probable cause to believe that unless the person is placed in protective custody the person poses an immediate danger of bodily injury to himself or others, the police officer may place the person in protective custody. Any person taken into protective custody under this paragraph shall be transported directly to an emergency room of a licensed general hospital or to another site designated by the community mental health program serving the area, for the purpose of determining if an involuntary emergency admission shall be ordered in accordance with RSA 135-C:28, I. The period of protective custody shall end when a physician makes a determination as to whether involuntary emergency admission shall be ordered or at the end of 6 hours, whichever event occurs first. 9 Effective Date.

I. Section 6 of this act shall take effect July 1, 1993.

II. Sections 7 and 8 of this act shall take effect July 1, 1994.

III. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill establishes a committee to oversee a study to determine the cost, management, and direction that should be taken to define the future and direction of the New Hampshire state hospital buildings and grounds. The committee shall make a report of its findings, together with any pro-

posed legislation, no later than November 1, 1994. The bill appropriates $70,000 for the fiscal year ending June 30, 1994, to the general court for the purpose of contracting for the studies which the act authorizes.

This bill also authorizes a peace officer who observes an act by a person which may be the result of mental illness and which may pose a likelihood of danger to the person or others to transport that person to a licensed hospital to determine whether such person should be involuntarily admitted into the state mental health system.

SENATOR BALDIZAR: I move the committee amendment.

Amendment adopted.

Referred to the Division on Finance (Rule #24).

HB 173-FN, an act making the Police Standards and Training Council responsible for certification of corrections officers and redefining the term "permanent policeman" to include "state corrections officers" for the purposes of the retirement system and relative to the payment of medical benefits to certain Group II retirement system members. Public Institutions, Health and Human Services committee. Ought to pass with amendment. Senator J. King for the committee.

2779B

Amendment to HB 173-FN

Amend the title of the bill by replacing it with the following:

AN ACT

relative to certification of corrections officers; redefining the term "permanent policeman" to include "state corrections officers" for retirement system purposes; the payment of medical benefits to certain group II retirement system members; and the supervision fee for probationers and parolees.

Amend RSA 504-A:13 as inserted by section 9 of the bill by replacing it with the following:

504-A:13 Supervision and Service Charges.

I. The court shall establish a supervision fee for probationers, and the parole board shall establish a supervision fee for parolees. The fee shall not be less than [$10] ***$20*** a month, unless waived ***in whole or in part*** by the court or board, and may be any greater amount as established by the court or board. The board shall adopt rules under RSA 541-A relative to a fee schedule. This fee shall be considered a condition of release, and failure to satisfy this obligation shall be grounds for a violation hearing, unless the probationer or parolee has been found to be indigent and, for that reason, unable to pay the fee. Service charges for collection of fees, fines, and restitution shall be established at 10 percent of the funds collected.

II. Monthly supervision fees collected under this section shall be deposited as follows:

(a) The first $10 to the general fund.

(b) $8 to the police standards and training council training fund to defray expenses of providing training to employees of the department of corrections.

(c) $2 to the probation and parole officer equipment and training fund.

(d) Amounts collected greater than $20 to the general fund.

Amend the bill by inserting after section 9 the following and renumbering the original sections 10-14 to read as 12-16 respectively.

10 New Section; Fund Established. Amend RSA 21-H by inserting after section 15 the following new section.

21-H:16 Probation and Parole Officer Equipment and Training Fund. There is established in the department of corrections a separate fund to be known as the probation and parole officer equipment and training fund from which the commissioner shall pay expenses incurred in probation and parole officer equipment and training.

11 New Subparagraph; Application of Receipts; Exception Added. Amend RSA 6:12, I by inserting after subparagraph (zz) the following new subparagraph:

(aaa) Moneys received from supervision and service charges under RSA 504-A:3, II(c) which shall be credited to the probation and parole officer equipment and training fund.

Amend the bill by replacing section 16 with the following:

16 Appropriation. The sum of $75,000 is hereby appropriated to the department of corrections for the biennium ending June 30, 1995, for the purpose of funding the equipment and special training projects of probation and parole officers. This appropriation shall be a charge against the probation and parole officer equipment and training fund established in section 10 of this act.

17 Effective Date.

I. Sections 12, 13 and 14 of this act shall take effect June 30, 1993.

II. Section 16 of the act shall take effect July 1, 1993.

III. The remainder of this act shall take effect January 1, 1994.

SENATOR J. KING: I move to adopt the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 292, an act relative to a home care client's bill of rights. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

2623B

Amendment to HB 292

Amend RSA 151:21-b as inserted by section 2 of the bill by inserting after paragraph III the following new paragraph:

IV. Nothing in this section shall be construed to apply to any visiting nurse service or home aid service conducted exclusively by and for the adherents of any church or religious denomination the tenets and practices of which include reliance solely upon spiritual treatment through prayer in lieu of medical treatment.

SENATOR MCLANE: I move the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 358, an act allowing the creation of or participation in professional corporations by physician assistants. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

2111B

Amendment to HB 358

Amend RSA 294-A:1, VI as inserted by section 2 of the bill by replacing it with the following:

VI. "Professional service" means any service which may lawfully be rendered only by certified public accountants, public accountants, architects, attorneys, podiatrists, chiropractors, dentists, pharmacists, professional engineers, land surveyors, registered professional nurses, optometrists, physicians and surgeons, ***physician assistants***, psychologists, and veterinarians licensed, registered, certified, or otherwise authorized under the provisions of RSA 309-A, 310-A, 311, 315, 316, 317-A, 318, 326-B, 327, ***328-D,*** 329, 330-A or 332-B and which may not lawfully be rendered by a corporation organized under the law of this state applicable to business corporations.

SENATOR J. KING: I move the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 427-FN, an act relative to the cost of living increases in the AFDC payment standard. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

2794B

Amendment to HB 427-FN

Amend RSA 167:7, II as inserted by section 1 of the bill by replacing it with the following:

II. The director of the division of human services of the department of health and human services shall establish for the aid to families with dependent children ***program*** consolidated standards of need, or consolidated standards of need except for shelter, which may be separate from the payment standards and which shall be annually revised to accurately reflect the current cost of ***the*** basic necessities of living compatible with decency and health as determined by reliable market data. ***Subject to applicable federal regulations,*** the director [may] ***shall*** further establish consolidated standards of payment, or consolidated standards of payment except for shelter[, subject to appropriated funds and applicable federal regulations] ***which shall be annually increased as necessary to equal the amount of the annual increase in the corresponding standard of need.***

SENATOR MCLANE: Tape inaudible.

SENATOR WHEELER: HB 427 has a $2.4 million impact. This bill is also an automatic escalator. This bill would require the director to increase the standard of payment automatically and avoid the legislative process; therefore, leveraging the budget process here, and that is not the way that we should do these things in this body. I urge you to vote inexpedient to legislate.

SENATOR MCLANE: I have a very important question to ask Senator Wheeler, and that is if you were opposed to a COLA or cost of living for kids, do you also oppose the COLA and cost of living for elderly which has always been in effect in this state for the last 12 years?

SENATOR WHEELER: Senator McLane, I didn't state my position opposed or for the cost of living increase. I think that what I said is that this bill is an automatic escalator and it should be handled in the budget process when you are taking a look at the total picture of funds available for all.

SENATOR MCLANE: I guess I feel that my question in comparison to the elderly was not answered. But you may be surprised, would you be surprised to know that I agree with you that it should be handled in the budget process?

Senator Hollingworth moved to have HB 427-FN, an act relative to the cost of living increases in the AFDC payment standard, laid on the table.

Adopted.

LAID ON THE TABLE

HB 427-FN, an act relative to the cost of living increases in the AFDC payment standard.

SENATOR MCLANE: If I could continue the discussion on HB 427-FN. This bill is part of a package of four bills that came over perhaps a little late from House Appropriations and they spent quite a lot of time on these four bills. They have asserted that the four bills have a combined cost of $12 million and that is part of the budget which they have sent over for legislative specials. I would repeat again that I think that this is a very important amendment for children in this state who are literally going hungry at the end of the month because their mothers only have 34 percent of what the proven cost of living, by the university, is of last year.

Recess.

Out of recess.

TAKEN OFF THE TABLE

Senator Blaisdell moved to have HB 427-FN an act relative to the cost of living increases in the AFDC payment standard, taken off the table.

Adopted.

SENATOR PODLES: Senator Blaisdell, we have four money bills here. Could you tell me if the money is there?

SENATOR BLAISDELL: Yes it is. That is why we brought the LBA's Office up. I wanted to be sure that people didn't think that we were trying to put something over on them. It doesn't increase the budget by 2. something million. Even I was questioning it myself, that is why we took a recess and brought LBA up here to show that that money is included, like we did the other evening in the budget process. It is there and it is not spending, as Senator Currier just asked me if I am spending another dollar, no. It was counted the other night, you were with us and that is all that I am going to say.

SENATOR CURRIER: Senator Blaisdell, my question is directed at the budget, if it was included in the 2.4 fiscal note on the bill, how much over the previous year's budget is this increasing it?

SENATOR BLAISDELL: I can't answer that on the floor of the Senate. I would have to look it up. I could say 2.4, I suppose, but I mean from the other meaning or when are you talking about?

SENATOR CURRIER: From last year. From the last biennium, those PAU's.

SENATOR BLAISDELL: I would say 2.4 then, but it is still included in the budget.

SENATOR CURRIER: But it is increasing the budget by $2.4 million is it not?

SENATOR BLAISDELL: As the House did by the way. The House also did that and sent it over to us.

SENATOR WHEELER: Senator McLane, does not this bill remove the words, "subject to appropriated funds for now and all eternity"? That this bill is an automatic escalator year after year after year?

SENATOR MCLANE: I am under the impression that this bill has the exact same wording in it as the social security bill that allows for an automatic increase to correspond to the cost of living.

SENATOR WHEELER: Thank you.

Question is on the committee amendment.

A roll call was requested by Senator Wheeler

Seconded by Senator Colantuono.

The following Senators voted Yes: W. King, Hough, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Bourque, Shaheen, Hollingworth, Cohen.

The following Senators voted No: MacDonald, Fraser, Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes, Russman, Delahunty.

Yeas: 12 - Nays: 11

Committee amendment is adopted.

Ordered to third reading.

Senator Lamirande is excused.

HB 453-FN, an act relative to delays in processing applications for state public assistance, and making an appropriation therefor. Public Institutions, Health and Human Services committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 504, an act relative to organ transplants. Public Institutions, Health and Human Services committee. Inexpedient to Legislate. Senator J. King for the committee.

SENATOR J. KING: I move the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 613-FN, an act requiring the Director of the Division of Human Services to adopt rules changing how earned income is calculated for people who receive Aid to the Permanently and Totally Disabled to be consistent with federal law. Public Institutions, Health and Human Services committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: HB 613 is work incentive legislation for those who receive Aid to the Permanent and Totally Disabled. The current law requires APTD recipients to forfeit all but the first $50 of their earnings. This bill will enable APTD recipients to keep their first $65 and half of the remainder. Equally important is the provision allowing APTD recipients to keep their Medicaid coverage as they make the transition to the working world. HB 613 aligns New Hampshire with federal rules under the supplemental security program as well as 45 other states. It is an investment in the future of APTD recipients. It allows the disabled to gradually become self-sufficient. This investment carries an up-front price tag of $476,460. in the fiscal year 1994, $501,000 in the fiscal year 1995 and $526,188 in the fiscal year 1996 and $553,323 in the fiscal year 1997, but it is likely to pay dividends in the years to come after that. Our fellow legislators in the House saw the merits of the program and included the necessary funds in its version of the budget. I hope that the Senate will do the same. New Hampshire has received $600 million in Medicaid enhancement funds and it is high time that we used a fraction of the money to better the lives of those receiving Medicaid.

SENATOR WHEELER: Senator Baldizar, could you tell me what percentage of that expenditure in each year that you listed is paid for by the property tax at the county level?

SENATOR BALDIZAR: It is 50 percent. But what it does is that it aligns us with the federal rules under the supplemental security income program. It is federal level.

SENATOR WHEELER: Would you agree, Senator Baldizar, that our Hillsborough County Commissioner came in and spoke against this bill and the next bill because of the mandate on the property tax? Do you believe that this bill is constitutional?

SENATOR BALDIZAR: I would agree with you that there was public testimony that some of the county commissioners did come in and testify in opposition to the bill. I would also state that while they did so, they did so unwilling based on the principal of the bill.

SENATOR WHEELER: Thank you.

Adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator Colantuono.

The following Senators voted Yes: W. King, MacDonald, Fraser, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Lovejoy, Currier, Roberge, Wheeler, Colantuono, Podles, Barnes.

Yeas: 15 - Nays: 7

Motion of ordering to third reading is adopted.

Senator Lamirande is excused.

HB 614-FN, an act changing the definition of disability for the purpose of receiving public assistance. Public Institutions, Health and Human Services committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: HB 614, like its companion bill HB 613, provides work incentives for those who receive aid to the permanently and totally disabled. The bill changes the definition of disability to conform with the federal Social Security act making the state definition consistent with federal law. Under HB 614, disability is redefined from permanent to one year and the inability to perform substantial, gainful activity. New Hampshire's strict definition of disability has deprived many disabled people of APTD and medical benefits they need and created a catch 22 for others. The current law requires a doctor to state that a person will never work, that there are no medical remedies to the disability in order to qualify for APTD. In some cases, expensive surgery or medication may alleviate the disability and allow the person to work; however, most cannot afford the medical remedy without the Medicaid coverage which accompanies APTD. Cities and towns have been forced to bear the welfare burden for those disabled people who are ineligible for APTD. HB 614 changes this. Manchester's welfare director estimated this bill will save the city $65,000. As with HB 613, the House has included the necessary funding in its version of the budget. I urge the Senate to do the same.

SENATOR WHEELER: Senator Baldizar, would you agree that this bill will cost the county government on the property tax, half a million dollars every year?

SENATOR BALDIZAR: I would say that if we don't enact this bill it is going to cost the cities and towns more.

SENATOR WHEELER: Thank you.

SENATOR W. KING: Senator Baldizar, would you agree that a vote against this bill would actually be a vote to raise property taxes all over the state?

SENATOR BALDIZAR: In this case I believe that you could be correct, Senator King.

Adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator Blaisdell.

The following Senators voted Yes: W. King, MacDonald, Fraser, Currier, Disnard, Blaisdell, Baldizar, Pignatelli, McLane, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Lovejoy, Roberge, Wheeler, Colantuono.

Yeas: 18 - Nays: 4

Motion of ordering to third reading is adopted.

Senator Lamirande is excused.

HB 672-FN-A-LOCAL, an act establishing a healthy kids corporation and making an appropriation therefor and continually appropriating a special fund. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

2807B

Amendment to HB 672-FN-A-LOCAL

Amend the introductory paragraph of RSA 126-H:6 as inserted by section 2 of the bill by replacing it with the following:

126-H:6 Rulemaking Authority. The corporation may adopt rules, pursuant to its own procedures, relative to:

Amend the bill by replacing section 6 with the following:

6 Effective Date.

I. Section 5 of this act shall take effect July 1, 1995.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill establishes a nonprofit corporation known as the New Hampshire healthy kids corporation. The corporation is to contract with health insurers to provide children with health care benefits as needed. The corporation is to make annual reports to the governor and the general court on the progress of the program. The corporation is to cease to exist on July 1, 1995, if no legislative action is taken to prevent such result.

The bill makes an appropriation to the corporation for startup costs.

SENATOR MCLANE: I think that this is one of the best bills of the session. Doug Hall, in meeting with members of the Children's Alliance and with the Child and Family Services, has worked long and hard on this bill. It is modeled after a Florida bill. It is estimated that 25,000 kids in New Hampshire are uninsured and this is an insurance bill just for kids. The only way that kids can now gain access to health insurance is through a parent's insurance and this would be through the schools, just for kids. One of the people who spoke at the meeting said that they had to pay $4,600 for their private insurance for a family, with a $1,500 deductible. This would be children having insurance just for themselves, probably at an estimate from Blue Cross at about $1,000 a year. It is an opportunity for those 25,000 kids in New Hampshire that are presently uninsured. It would establish a nonprofit corporation to have five pilot sites. I hope that you will pass this bill. It appropriates $2,240,000 through the end of the biennium and it has an amendment which would make the bill after two years it would have to be reinstated by the House and the Senate. It lapses.

SENATOR LOVEJOY: Senator McLane, do you have any idea after the pilot program when they start up what the continuing cost would be?

SENATOR MCLANE: I am not sure of those costs, but I do know that in Florida it has become a self-sustaining program. This, the pilot program, would be the beginning; and that would be for the printing of the booklet that the kids took home and for the negotiating with the three insurance companies, Health Source, Matthew Thornton and Blue Cross Blue Shield who have all shown an interest in it. I should also make clear for the record, Mr. President, that we have made an amendment which shows that the rulemaking would be through the corporation and not through the state rulemaking.

SENATOR LOVEJOY: Self-supporting in what manner?

SENATOR MCLANE: In that once the program is set up, the kids in every school, but starting with just the five pilot programs, would take home to their parents an offer for kids' insurance. This would not only give these kids the coverage necessary, but it also would insure that they had a doctor and that they didn't have to go to the emergency room.

SENATOR LOVEJOY: Thank you.

Question is on the committee amendment

A roll call was requested by Senator W. King.

Seconded by Senator Blaisdell.

The following Senators voted Yes: W. King, MacDonald, Fraser, Lovejoy, Currier, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, McLane, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: 0.

Yeas: 22 - Nays: 0

Committee amendment is adopted.

Ordered to third reading.

Senator Lamirande is excused.

HB 218-FN-A-LOCAL, an act relative to the driver training fund. Transportation committee. Ought to Pass with Amendment. Senator Bourque for the committee.

2561B

Amendment to HB 218-FN-A-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

relative to the driver training fund and expanding the "lemon law" to include recreational vehicles.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Subparagraph; Recreational Vehicles Added. Amend RSA 357-D:2, X by inserting after subparagraph (c) the following new subparagraph:

(d) "Recreational vehicles," which shall include any of the following vehicles:

(1) Motorhome or van, which is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.

(2) Pickup camper, which is a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.

(3) Recreational trailer, which is a vehicular, portable structure built on a single chassis, 400 square feet or less when measured at the largest exterior horizontal projections, calculated by taking the measurements of the exterior of the recreational trailer including all siding, corner trim, molding, storage space and area enclosed by windows but not the roof overhang. It shall be designed primarily not for use as a permanent dwelling but as a temporary dwelling for recreational, camping, travel or seasonal use.

AMENDED ANALYSIS

This bill requires that $150 be paid to participating schools for each student who has successfully completed the driver's education course.

This bill also includes recreational vehicles in the definition of a "motor vehicle" for purposes of the "lemon law," RSA 357-D.

SENATOR BOURQUE: I move the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 258-FN, an act repealing the "bingo card" program registration of certain interstate certificates or permits for truckers. Transportation committee. Ought to Pass with Amendment. Senator MacDonald for the committee.

2388B

Amendment to HB 258-FN

Amend RSA 375-A:14, II(b) as inserted by section 1 of the bill by replacing it with the following:

(b) A single state registration system which will comply with 49 U.S.C. 11506 and related federal laws and regulations. This authorization includes the authority to set a New Hampshire fee to be charged per vehicle, which shall not exceed $10.

Amend RSA 375-B:17, II as inserted by section 2 of the bill by replacing it with the following:

II. Administer and enforce the provisions of RSA 375-B. The commissioner shall adopt rules relative to the administration of RSA 375-B. ***The commissioner may adopt rules relative to a single state registration system which shall comply with 49 U.S.C. 11506 and related federal laws and regulations. This authorization includes the authority to set a New Hampshire fee to be charged per vehicle, which shall not exceed $10;*** and

Amend the bill by replacing section 3 with the following:

3 Rulemaking Authority Added. Amend RSA 376:21, II to read as follows:

II. The commissioner shall administer and enforce RSA 376 and shall adopt rules, pursuant to RSA 541-A, relative to the administration of RSA 376. ***In addition, the commissioner may adopt rules relative to a single state registration system which shall comply with 49 U.S.C. 11506 and related federal regulations. This authorization includes the authority to set a New Hampshire fee to be charged per vehicle, which shall not exceed $10.***

AMENDED ANALYSIS

This bill repeals the "bingo card" registration program that requires truckers to register their vehicles in order to obtain a permit authorizing operations into or through the state.

This bill allows the commissioner of safety to adopt rules to establish a statewide registration program.

This bill limits the registration fee for certain interstate certificates or permits for truckers to $10.

SENATOR MACDONALD: I move the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SUSPENSION OF THE RULES

Senator Blaisdell moved that the Rules of the Senate be suspended to dispense the notice of a committee report in the calendar, and that the bill be put on Second Reading at the present time on HB 147-FN-A, an act establishing a committee to study the future and direction of the New Hampshire State Hospital grounds and making an appropriation therefor.

Adopted by the necessary 2/3 votes.

HB 147-FN-A, an act establishing a committee to study the future and direction of the New Hampshire State Hospital grounds and making an appropriation therefor. Finance committee. Ought to pass with amendment. Senator Blaisdell for the committee.

2866B

Amendment to HB 147-FN-A

Amend the bill by replacing section 6 with the following:

6 Appropriation. The sum of $1 is hereby appropriated to the general court, joint expenses-operations, for the fiscal year ending June 30, 1994, for the purpose of contracting for the studies authorized in section 1 of this act. This sum shall be in addition to any other funds appropriated to the general court. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

AMENDED ANALYSIS

This bill establishes a committee to oversee a study to determine the cost, management, and direction that should be taken to define the future and direction of the New Hampshire state hospital buildings and grounds. The committee shall make a report of its findings, together with any proposed legislation, no later than November 1, 1994.

The bill makes an appropriation for the fiscal year ending June 30, 1994, to the general court for the purpose of contracting for the studies which the act authorizes.

SENATOR BLAISDELL: Mr. President and members of the Senate, this is the House Bill TAPE INAUDIBLE, we found out that there was about $70,000 in this. I want to amend the bill to put a dollar in it and send it over to the House rather than the $70,000. That will keep it alive and probably get it to a Committee of Conference so that we can discuss it. I think that $70,000 is a lot of money and I think that we should be discussing that. I felt that $70,000 to do that would be incumbent upon us so we put a dollar in it and let's send it over to the House.

Amendment adopted.

Ordered to third reading.

Enrolled Bill Amendment to SB 117

#2808

Amend RSA 490:26-e, III as inserted by section 1 of the bill by replacing line 2 with the following:

requirements established under this section.

Senator McLane moved adoption.

Adopted.

Enrolled Bill Amendment to HB 244

#2809

Amend RSA 41:11 as inserted by section 2 of the bill by replacing lines 1-3 with the following:

41:11 Regulation of Use of Highways, etc. Unless regulated by the commissioner of [public works and highways] ***the department of transportation*** as provided in RSA [249:5] ***236:1***, the selectmen may regulate the use of all public

Senator McLane moved adoption.

Adopted.

Enrolled Bill Amendment to HB 500

#2751

Amend section 1 of the bill by replacing lines 1 and 2 with the following:

1 Lease To Clearly State Property Tax Obligations of Lessee. Amend the first paragraph of RSA 72:23, I to read as follows:

Senator McLane moved adoption.

Adopted.

Enrolled Bill Amendment to HB 521

#2750

Amend section 7 of the bill by replacing line 4 with the following:

VI-a. A maternity benefits rider for covered persons who request it,

Senator McLane moved adoption.

Adopted.

Enrolled Bill Amendment to HB 671-FN

#2770

Amend the bill by replacing sections 1 and 2 with the following:

1 License to Carry Pistols and Revolvers; Term Extended. Amend RSA 159:6 to read as follows:

159:6 License to Carry. The selectmen of a town or the mayor or chief of police of a city or some full-time police officer designated by them respectively, upon application of any resident of said town or city, or the director of state police, or some person designated by him, upon application of a nonresident, shall issue a license to such applicant authorizing him to carry a loaded pistol or revolver in this state for not more than [2] ***4*** years from the date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any proper purpose, and that he is a suitable person to be licensed. Hunting or target shooting shall be considered a proper purpose. The license shall be in duplicate and shall bear the name, address, description and signature of the licensee. The original thereof shall be delivered to the licensee and the duplicate shall be preserved by the people issuing the same for [2] ***4*** years. The license shall be issued within 14 days after application therefor, and, if such application is denied, the reason for such denial shall be stated in writing, the original of which such writing shall be delivered to the applicant, and a copy thereof kept in the office of the person to whom the application was made. The fee for licenses issued to residents of the state shall be [$4] ***$10***, which fee shall be for the use of the law enforcement department of the town granting said licenses; the fee for licenses granted to out-of-state residents shall be [$10] ***$20***, which fee shall be for the use of the state. The director of state police is hereby authorized and directed to prepare forms for the licenses required under this chapter and forms for the application for such licenses and to supply the same to officials of the cities and towns authorized to issue said licenses. No other forms shall be used by officials of cities and towns. The cost of said forms shall be paid out of the fees received from nonresident licenses.

2 Effective Date. This act shall take effect January 1, 1994, at 12:01 a.m.

Senator McLane moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives has re-referred to committee the following entitled Senate Bill:

SB 236-FN-A, allowing a tax credit against the business profits tax for certain businesses.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 108-Local, permitting counties to establish special equipment accounts for registers of deeds.

HB 113, expanding the financial authority of towns.

HB 114, relative to hunting restrictions.

HB 115, repealing reporting requirements for fish or game propagation licensees; and limiting the time bob-houses may be on public property and adding a penalty for violations.

HB 138, repealing statutory provisions relative to a guide's license to take bear.

HB 227, relative to enforcement of parking violations.

HB 284, regarding notice for condominium association meetings and relative to voting by condominium owners.

HB 303, changing the manner in which a person accepts nomination for office by write-in vote.

HB 328, relative to the priority for distribution in insolvency proceedings of fees and costs paid in advance by consumers in relation to a mortgage application.

HB 352, requiring DWI offenders to supply a certified copy of their New Hampshire driver's license record at the time of enrollment into an impaired driver intervention program.

HB 490, permitting a registered voter who is registered as undeclared to vote in a primary election and on the day of the primary election register again as undeclared.

HB 571-FN, establishing the emissions reduction credits trading program and creating a committee to study emissions reduction credits trading.

HB 689-FN-Local, relative to funds for students residing in organized towns and unorganized places.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 39, making a technical correction in the enhanced 911 system law and specifying a 4-year term for the executive director of the Bureau of Emergency Communications.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 39, making a technical correction in the enhanced 911 system law and specifying a 4-year term for the executive director of the Bureau of Emergency Communications.

Senator Currier moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 42, revising the committee studying a statewide trauma care system and extending the completion date for the committee's work.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 42, revising the committee studying a statewide trauma care system and extending the completion date for the committee's work.

Senator Currier moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 67, relative to wage assignment for child support.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 67, relative to wage assignment for child support.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 79, also known as the "Kimberly Goss Act", limiting persons arrested for a violent offense while on parole or probation for a similar offense from receiving bail.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 79, also known as the "Kimberly Goss Act", limiting persons arrested for a violent offense while on parole or probation for a similar offense from receiving bail.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 96, making the State Credit Union Act conform with the Federal Credit Union Act.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 96, making the State Credit Union Act conform with the Federal Credit Union Act.

Senator Fraser moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 102, establishing a committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on the state and to study certain incentives and propose a state policy regarding the use of alternative transportation fuel vehicles.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 102, establishing a committee to conduct a comprehensive study of alternative transportation fuels, alternative fuel vehicles and their impact on the state and to study certain incentives and propose a state policy regarding the use of alternative transportation fuel vehicles.

Senator MacDonald moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 103, relative to the construction of exit 10 on the Spaulding turnpike.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 103, relative to the construction of exit 10 on the Spaulding turnpike.

Senator MacDonald moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 111, relative to penalties for issuing bad checks and authorizing a pilot bad check restitution program.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 111, relative to penalties for issuing bad checks and authorizing a pilot bad check restitution program.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 127, requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 127, requiring that certain electric utility savings as a result of debt refinancings using tax-exempt pollution control revenue bonds be used for investment in energy conservation and efficiency.

Senator Russman moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 130, requiring disciplinary action against a physician for certain prohibited conduct.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 130, requiring disciplinary action against a physician for certain prohibited conduct.

Senator Currier moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 167-FN, encouraging restaurants to practice source reduction at their establishments by requiring the establishment of a waste reduction certificate to be awarded by the Department of Environmental Services.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 167-FN, encouraging restaurants to practice source reduction at their establishments by requiring the establishment of a waste reduction certificate to be awarded by the Department of Environmental Services.

Senator Russman moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 174-FN, relative to the notice to counties when children are placed by a court order.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 174-FN, relative to the notice to counties when children are placed by a court order.

Senator Podles moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 187-FN, relative to public utility ratemaking.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 187-FN, relative to public utility ratemaking.

Senator Roberge moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 202-FN, relative to special plates and windshield placards for persons with walking disabilities.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 202-FN, relative to special plates and windshield placards for persons with walking disabilities.

Senator MacDonald moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 203-FN-A, clarifying the applicability of the meals and rooms tax to colleges and universities.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 203-FN-A, clarifying the applicability of the meals and rooms tax to colleges and universities.

Senator McLane moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 207-FN, relative to work incentives for families receiving Aid to Families with Dependent Children.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 207-FN, relative to work incentives for families receiving Aid to Families with Dependent Children.

Senator J. King moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 213-FN-A, relative to advance reservations on rooms.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 213-FN-A, relative to advance reservations on rooms.

Senator McLane moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 216-FN-LOCAL, relative to persons and estates chargeable for support.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 216-FN-LOCAL, relative to persons and estates chargeable for support.

Senator J. King moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 241-FN-A, increasing the cap on the continually-appropriated revolving fund for educational publications.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 241-FN-A, increasing the cap on the continually-appropriated revolving fund for educational publications.

Senator Disnard moved concurrence.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

HB 163, establishing and continually appropriating a leaking underground storage tank cost recovery fund.

HB 271, adding enchanced criminal penalties for acts of knowing endangerment under the hazardous waste laws.

HB 393, relative to duties of supervisors of a checklist.

HB 216, allowing owners of homes damaged by disaster to place temporary manufactured housing on the lot while the home is being rebuilt.

HB 332, authorizing municipalities to create revolving funds to support public recreation parks.

SB 50, extending the report date and adding additional members to the Law Enforcement and Prosecutor Task Force.

SB 60, relative to solicitation of prostitutes.

SB 72, relative to central business service districts and relative to the definition of "municipality."

SB 100, protecting animal facilities and organizations or projects involving animals.

Senator Currier moved adoption.

Adopted.

ANNOUNCEMENTS
RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present

time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Wednesday, May 19, 1993 at 11:00 a.m.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 147-FN-A, an act establishing a committee to study the future and direction of the New Hampshire State Hospital grounds and making an appropriation therefor.

HB 173-FN, an act making the Police Standards and Training Council responsible for certification of corrections officers and redefining the term "permanent policeman" to include "state corrections officers" for the purposes of the retirement system and relative to the payment of medical benefits to certain Group II retirement system members.

HB 197, an act relative to insurance fraud.

HB 218-FN-A-LOCAL, an act relative to the driver training fund.

HB 221-FN, an act modifying the Fish and Game Department's eminent domain powers.

HB 258-FN, an act repealing the "bingo card" program registration of certain interstate certificates or permits for truckers.

HB 275, an act allowing towns to create special funds for highway expenditures.

HB 292, an act relative to a home care client's bill of rights.

HB 358, an act allowing the creation of or participation in professional corporations by physician assistants.

HB 390, an act to limit the terms of office for the members of the United States Congress from New Hampshire.

HB 427-FN, an act relative to the cost of living increases in the AFDC payment standard.

HB 448, an act to define total expenditures made during a state primary campaign.

HB 453-FN, an act relative to delays in processing applications for state public assistance, and making an appropriation therefor.

HB 476, an act establishing the crime of stalking.

HB 556-FN-A, an act offering a reward for the apprehension of former Newport district court judge, John C. Fairbanks, and making an appropriation therefor.

HB 559, an act allowing a customer to terminate service from a water utility.

HB 567-FN-A, an act requiring the office of State Planning to conduct a satellite survey of clearcut areas and making an appropriation therefor.

HB 572-FN-A, an act authorizing the Division of Forests and Lands to assess administrative fines, establishing a forest management and protection fund, and appointing special deputy forest rangers.

HB 575-FN, an act limiting dog training and authorizing the executive director of Fish and Game to issue permits for the use of bear dogs to control agricultural and property damage.

HB 606-FN, an act authorizing employers subject to the Workers' Compensation law to establish managed care programs.

HB 613-FN, an act requiring the director of the Division of Human Services to adopt rules changing how earned income is calculated for people who receive aid to the permanently and totally disabled to be consistent with federal law.

HB 614-FN, an act changing the definition of disability for the purpose of receiving public assistance.

HB 615-FN-LOCAL, an act recodifying the municipal budget law.

HB 633, an act repealing inactive study committees and extending the reporting date for certain study committees.

HB 672-FN-A-LOCAL, an act establishing a healthy kids corporation and making an appropriation therefor and continually appropriating a special fund.

HCR 14, a resolution: urging members of Congress to oppose aspects of the proposed federal energy tax which discriminates against heating oil consumers in the Northeast and Mid-Atlantic regions.

Senator Delahunty moved that the Senate be in recess until Wednesday, May 19, 1993 at 11:00 a.m. for the sole purpose of receiving House messages and Enrolled Bill Reports.

Adopted.

Recess.

Out of Recess.

Senator Lamirande was excused at 5:30 p.m.

LATE SESSION
RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Wednesday, May 19, 1993 at 11:30 a.m.

Adopted.

Senator Disnard moved that the business of the day being completed, that the Senate now adjourn until Wednesday, May 19, 1993 at 11:30 a.m.

Adopted.

Adjournment.

May 19, 1993

The Senate met at 11:30 a.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

Some days you probably feel like your work here is rather mundane and even boring. Paying attention to endless messages from the House must often feel like a lot of running in place. Not so. Remember that all of what you do is important - even the nonglamourous part. A quote from Goethe, "Once you have missed the first button hole, you'll never manage to button up". It all matters. Lord of all progress, as they seek to button us up, give to these leaders the wisdom to know how and the courage to try - in things both large and small - to preserve order in the midst of change and change in the midst of order, lest in the end we find that they have not enlivened us, but rather have embalmed us. Amen

Senator Lovejoy led the Pledge of Allegiance.

INTRODUCTIONS

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 180-FN-Local, increasing the fee charged by the state on returned checks and making technical changes relating to enrollment and administrative provisions.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 180-FN-Local, increasing the fee charged by the state on returned checks and making technical changes relating to enrollment and administrative provisions.

Senator Fraser moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 193, relative to liability under the hazardous waste, oil spillage and underground storage facilities laws and amending statutory definitions to clarify the secured creditor exemption.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 193, relative to liability under the hazardous waste, oil spillage and underground storage facilities laws and amending statutory definitions to clarify the secured creditor exemption.

Senator Russman moved concurrence.

Adopted.

HOUSE MESSAGE

The House of Representatives has re-referred to committee the following entitled Senate Bills:

SB 43, relative to the state board of auctioneers.

SB 149-FN, relative to land surveying by proprietorships, corporations or partnerships.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate bill sent down from the Senate:

SB 194-FN, relative to seatbelt legislation.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

SB 9, adopting the uniform commercial code Article 2A on leases and conforming amendments to Articles 1 and 9.

SB 61, relative to substitution of alternate jurors after final submission of a case to the jury.

SB 139-FN-A, requiring the department of Environmental Services to design a River Basin Planning and Assessment Program and making an appropriation.

SB 148-FN, making an appropriation nonlapsing for regional vocational education tuition and transportation, and allowing the Kearsarge Regional School District to hold its 1994 and 1995 annual meetings in such places as the officers deem appropriate.

COMMITTEE REPORTS

HB 663-FN-L, an act making technical corrections to the securities laws and repealing 2 obsolete provisions regarding corporate stock. Banks committee. Ought to Pass with Amendment. Senator Fraser for the committee.

2834B

Amendment to HB 663-FN

Amend the title of the bill by replacing it with the following:

AN ACT

making technical corrections to the securities laws and to the Business Corporations Act and repealing 2 obsolete provisions regarding corporate stock.

Amend the bill by replacing all after section 29 with the following:

30 Fee for Application for Use of Indistinguishable Name Removed. Amend RSA 293-A:1.22 (b) to read as follows:

(b) The secretary of state shall collect the following fees for:

[(1) Application for use of indistinguishable name	$ 15]
[(2)]*(1)* Application for reserved name	$ 15
[(3)]*(2)* Notice of transfer of reserved name	$ 15
[(4)]*(3)* Application for registered name	$ 25
[(5)]*(4)* Application for renewal of registered name	$ 25
[(6)]*(5)* Statement of change of registered agent or registered office, or both	$ 15

[(7)]*(6)* Agent's statement of resignation	No fee
[(8)]*(7)* Certificate of judicial dissolution	No fee
[(9)]*(8)* Certificate of revocation of authority to transact business	No fee
[(10)]*(9)* Annual report	$100
[(11)]*(10)* Application for certificate of existence or authorization	$ 5
[(12)]*(11)* Application for certificate of existence or authorization in long form	$ 10
[(13)]*(12)* Any other document required or permitted to be filed by this chapter	$ 15

31 Reference to Consolidation Deleted. Amend RSA 293-A:1.31 (a)(3) to read as follows:

(3) Filing articles of merger [or consolidation] increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have the authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

32 Reference Change; Annual Report. Amend RSA 293-A:1.34 to read as follows:

293-A:1.34 Maintenance Fees Payable by Foreign Corporations. For the privilege of continuing to exercise its authority to transact business in this state, every foreign corporation authorized to transact business in this state shall pay annually to the secretary of state, at the time of making its annual [return] ***report,*** a franchise fee, also to be known as a maintenance fee, of $300. In no case, however, shall the annual franchise fee be required of any such corporation which on April 1 of any year shall not have been registered to transact business in the state for 6 months.

33 Effective Date of Incorporation. Amend RSA 293-A:2.03 (a) to read as follows:

(a) Unless a delayed effective date is specified, the corporate existence begins ***at the close of business on the date*** when the articles of incorporation are filed.

34 Corporations Act; Corporate Name. RSA 293-A:4.01 is repealed and reenacted to read as follows:

293-A:4.01 Corporate Name.

(a) A corporate name shall:

(1) Contain the word "corporation," "incorporated," or "limited" or the abbreviation "corp.," "inc.," or "ltd.", or words or abbreviations of like import in another language.

(2) Not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 293-A:3.01 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name shall not be the same as, or deceptively similar to:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) a corporate name reserved or registered under RSA 293-A:4.02 or 293-A:4.03;

(3) the fictitious name of another foreign corporation authorized to transact business in this state;

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(5) a trade name registered with the secretary of state under RSA 349;

(6) a domestic or foreign limited partnership name filed pursuant to RSA 304-B;

(7) the name of a foreign partnership registered pursuant to RSA 305-A;

(8) the name of a New Hampshire investment trust filed under RSA 293-B;

(9) the name of an agency or instrumentality of the United States or this state or a subdivision thereof; and

(10) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the respective political organization.

(c) A corporation may apply to the secretary of state for authorization to use a name that is the same as, or deceptively similar to, one or more of the names described in subsection (b). The secretary of state shall authorize the use of the name applied for if:

(1) The holder or holders of the name as described in subsection (b) gives written consent to use the same or deceptively similar name; and if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(2) The corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is not the same as, or deceptively similar to, the name of the applying corporation; or

(3) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This chapter does not control the use of fictitious names.

(f) Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic corporation under the same name as the trade name.

35 Registered Name. Amend RSA 293-A:4.03(a) to read as follows:

(a) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this chapter, provided its [corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter, or the name of an agency or instrumentality of the United States or this state or a subdivision thereof, or the name of a proprietorship, partnership or an association registered as a trade name in this state] ***corporation name is available as required by RSA 293-A:4.01.***

36 Registered Name. Amend RSA 293-A:4.03(b)(1)(i) to read as follows:

(i) An application for registration executed [by the corporation] by an officer of the corporation, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

37 Change of Registered Agent. Amend RSA 293-A:5.02(a)(4) to read as follows:

(4) The name of its current registered [office] ***agent***.

38 Reference Change. Amend RSA 293-A:7.20(b) to read as follows:

(b) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of RSA 293-A:16.02(c)***(1)***, to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

39 Company Deleted. Amend RSA 293-A:10.02(5) to read as follows:

(5) to change the corporate name by substituting the word "corporation," "incorporated," ["company,"] "limited," or the abbreviation "corp.," "inc.," ["co.,"] or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

40 Reference Change. Amend RSA 293-A:14.20(1) to read as follows:

(1) The corporation for 2 consecutive years does not pay within 60 days after they are due any franchise [taxes] ***fees*** or penalties imposed by this chapter or other law;

41 Corporate Name of Foreign Corporation. RSA 293-A:15.06 is repealed and reenacted to read as follows:

293-A:15.06 Corporate Name of Foreign Corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of RSA 293-A:4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) may add the word "corporation," "incorporated," or "limited," or the abbreviation "corp.," "inc.," or "ltd.," to its corporate name for use in this state; or

(2) may use an available fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of RSA 293-A:4.01, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of subsection (a) and obtains an amended certificate of authority under RSA 293-A:15.04.

42 Revocation of Certificate of Authority. RSA 293-A:15.30 is repealed and reenacted to read as follows:

293-A:15.30 Revocation of Certificate of Authority.

(a) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(1) The corporation has failed to file its annual report within the time required by this chapter or has failed to pay any annual report, franchise or maintenance fees or penalties prescribed by this chapter when they have become due and payable;

(2) The corporation has failed to appoint and maintain a registered agent in this state as required by this chapter;

(3) The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of the change as required by this chapter;

(4) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation within the time required by this chapter; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by the corporation or on its behalf, pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless;

(1) He shall have given the corporation not less than 60 days' notice of the revocation by mail addressed to its principal office listed on the records of the New Hampshire secretary of state; and

(2) The corporation shall fail prior to revocation to file the annual report, or pay the annual report, franchise or maintenance fees or penalties, or file the required statement of change of registered agent or registered office, or file the articles of amendment, or correct the misrepresentation.

43 Issuance of Certificate of Revocation. RSA 293-A:15.31 is repealed and reenacted to read as follows:

293-A:15.31 Issuance of Certificate of Revocation.

(a) Upon revoking any certificate of authority, the secretary of state shall:

(1) Issue a certificate of revocation in duplicate;

(2) Record one of the certificates in his office; and

(3) Mail to the corporation at its principal office listed on the records of the New Hampshire secretary of state a notice of the revocation accompanied by one of the certificates.

(b) Upon the issuance of the certificate of revocation, the authority of the corporation to transact business in this state shall cease.

44 Appeal from Revocation. Amend RSA 293-A:15.32 (a) to read as follows:

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the superior court within 30 days after [service of the certificate of] revocation is perfected. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

45 Date Changed; Annual Report. Amend RSA 293-A:16.22 to read as follows:

(b) Information in the annual report shall be current as of [the date the annual report is executed on behalf of the corporation] ***January 1 of the year the report is due.***

46 New Section; Securities; Interstate Cooperation. Amend RSA 421-B by inserting after section 31 the following new section:

421-B:31-a Interstate Cooperation. The secretary of state and his staff shall maintain close relations with the securities and corporate administrators of other states and shall actively participate in the activities and affairs of the North American Security Administrators Association and other organizations so far as it will, in the secretary of state's judgment, enhance the purposes of the securities and corporate laws and shall be exempt from the provisions of RSA 9:25. The actual and necessary travel and related expenses incurred in attending meetings of said association, their committees, subcommittees, hearings, and other official activities, as well as the general expenses of participation in such associations, shall be a charge on available funds and the appropriation of the office of the secretary of state.

47 Exemptions Added. RSA 421-B:17, I(f) is repealed and reenacted to read as follows:

(f)(1) Any security listed or approved for listing upon notice of issuance on the following securities markets, and any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities exempted in this subparagraph:

(i) The New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation National Market System,

(ii) The Boston Stock Exchange, the Chicago Board Options Exchange or the securities designated by the board of governors of the Federal Reserve System as "O.T.C. Margin Stocks," if quotations have between available and public trading has taken place for such class of security prior to the offer or sale of that security in reliance upon this exemption.

(2) The secretary of state may withdraw an exemption in subparagraph (f)(1) if the secretary determines, for any security or class of securities sought to be sold in reliance upon this exemption, that the listing requirements or standards have been so changed, or so insufficiently applied, that the protection of investors contemplated and relied upon by the legislature in granting this exemption is no longer afforded or is substantially reduced.

(3) The exemption provided by the subparagraph shall not be available to securities listed on the American Stock Exchange Emerging Company Marketplace, the National Association of Securities Dealers Automated Quotation Small Cap Market, or any other securities market affiliated with a market named in subparagraph (f)(1)(i) or (ii) and so designated by the secretary of state.

(4) Issuers of securities that are exempt under subparagraph (f)(1)(i) shall file a signed notice of intent to sell or issue and pay a fee for the initial public offering before the first sale of the securities in this state. Failure to file the notice or pay any fee will be subject to a penalty of up to 3 percent of the amount outstanding per month for every month that the notice is not filed or the fee is not paid, up to a maximum of 20 percent. Payment of a fee based on a good faith estimate of the offering value of the issue sold in this state shall result in an adjustment in the fee for the amount ultimately sold above the estimate, but shall not result in a penalty.

48 Fees Added. Amend RSA 421-B:31, I(h) to read as follows:

(h)	***Fee for securities sold in initial public offerings in this state under RSA 421-B:17***	***2/10 of one percent of the offering value of the issue sold in this state provided said fee shall not be more than 1,050.***
(i)	***Non-refundable examination fee for RSA 421-B:17, I (f)(1)(i) exemption***	***$200***
(j)	Non-refundable examination fee for RSA 421-B:17, II(r) exemption	$500

49 New Subparagraph; Renewal Fee Added. Amend RSA 421-B:31, II by inserting after subparagraph (d) the following new subparagraph:

(e) Registration fee for securities offered in this state, due 1 year from the registration effectiveness	2/10 of one percent of the offering value of the issue sold in this state provided said fee shall not be more than $1,050.

50 Effective Date.

I. Sections 17, 21, 22, 26, and 29-46 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill makes technical corrections to RSA 421-B, the state securities laws, and to RSA 293-A, the Business Corporations Act.

This bill establishes a revenue-neutral initial public offering exemption for national securities markets and clarifies which securities markets do not qualify for an exemption.

The bill also repeals 2 obsolete provisions regarding capital stock.

SENATOR FRASER: Mr. President and members of the Senate, there are four parts to this bill. I want to advise the Senate that all four parts of this bill have been subject to a public hearing. The vote was 5 to 0, ought to pass. HB 663 is the result of the break up of the securities division into the Attorney General's Office and the Secretary of State's Office. When the legislature disbanded the office of the Securities and Regulations two years ago, several duties and authorities were inadvertently left out of the legislation. HB 663 puts those authorities and duties back into the statute to allow the securities and regulations to continue. There is one new section which addresses fees to be addressed by the Attorney General's Office for those issuers who either file late or request an expedited processing. The amendment to HB 663 comes from the Secretary of States Office and deals with the corporate laws that were recodified last year. In the recodification process, a couple of things were either put in there that shouldn't have been there such as the application fee for use of indistinguishable names, our law does not recognize indistinguishable names but we were able to collect fees for it anyway. It also addresses some problems that have come up with the actual application of the recodified corporate laws. The amendment also addresses an exemption from filing which the Senate has already passed but we were not able to get it through the House. Mr. President and my colleagues in the Senate, we urge the adoption of HB 663 as amended.

Amendment adopted.

Ordered to third reading.

HB 243, an act establishing a committee to study local planning needs and mandates, and investigating various options available to fund planning services at the local level. Economic Development committee. Ought to Pass with Amendment. Senator W. King for the committee.

2862B

Amendment to HB 243

Amend section 2 of the bill by replacing paragraphs III-XII with the following:

III. One representative of the seacoast region, appointed by the New Hampshire Municipal Association.

IV. One representative of the lakes region, appointed by the New Hampshire Planners Association.

V. One representative of the Dartmouth/Lake Sunapee region, appointed by the New Hampshire Home Builders Association.

VI. One representative of the central New Hampshire region, appointed by the New Hampshire Business and Industry Association.

VII. One representative of the southern New Hampshire region, appointed by the New Hampshire Association of Regional Planning Commissions.

VIII. One representative of the north country, appointed by the Society for the Protection of New Hampshire Forests.

IX. One representative of the Monadnock region, appointed by the New Hampshire Association of Conservation Commissions.

X. The commissioner of the department of resources and economic development, or designee.

XI. The director of the office of state planning, or designee.

XII. Two members of the public, each of whom shall have recent experience on a local planning board, appointed by the governor.

XIII. One representative of the Association of General Contractors, appointed by such association.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 Mileage. Legislative members of the committee shall receive mileage, when attending to the duties of the committee, at the usual legislative rate.

SENATOR W. KING: This is merely a study committee that is to look at the planning needs for local communities and mandates and to investigate those various options to fund those services. The amendment to it just makes the committee a little more geographically diverse.

Amendment adopted.

Ordered to third reading.

HB 592-FN-A, an act establishing a committee to study the state's economic development activities. Economic Development committee. Ought to Pass with Amendment. Senator W. King for the committee.

2829B

Amendment to HB 592-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a committee to study the state's economic development activities and establishing a committee to study the feasibility of establishing a community service program in New Hampshire.

Amend the bill by replacing all after section 4 with the following:

5 Purpose.

I. The general court finds that the expense of post secondary education is beyond the reach of many New Hampshire students. A program that allows students to perform community service to the state, their municipality, or a non-profit organization to offset the costs of post secondary education will put higher education within the reach of many New Hampshire families who otherwise would not be able to afford post secondary education.

II. The general court also finds that community service programs in other states and municipalities have aided disadvantaged youth, and that such programs teach responsibility, leadership, and create better citizens.

6 Committee Established. There is hereby established a committee to study the feasibility of establishing a community service program in New Hampshire. The committee shall be composed of the following:

I. Two representatives, appointed by the speaker of the house.

II. Two senators, appointed by the senate president.

III. One representative of the New Hampshire Job Training Council, appointed by such council.

IV. The commissioner of the department of resources and economic development, or designee.

V. One representative of the business community, appointed by the governor.

VI. One representative of the New Hampshire School Counselors Association, appointed by such association.

VII. One representative of the Student Conservation Association, appointed by such association.

VIII. One representative of the Granite State Association of Non-Profits, appointed by such association.

IX. One representative of post secondary technical colleges, appointed by the governor.

X. Two students in the university system, appointed by the chancellor.

XI. One member of the public, appointed by the governor.

7 Meetings. Appointments to the committee established in section 5 of this act shall be made within 30 days of the effective date of this act. The first-named senate member of the committee shall call the initial meeting within 45 days of the effective date of this act. The committee shall elect a chairperson at its initial meeting. Legislative members shall receive mileage at the usual rate for attending to the duties of the committee.

8 Report Required. The committee shall investigate the establishment of a community service program in New Hampshire. The committee shall review similar programs in other states and communities and recommend an effective program for New Hampshire. The committee shall also review funding sources for the start-up and continuation of the program, including federal and private funds. A copy of the report shall be submitted to the speaker of the house and president of the senate, with appropriate legislation, by November 1, 1993.

9 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a committee to study the state's economic development activities.

The bill also establishes a committee to investigate the establishment of a community service program in New Hampshire.

SENATOR W. KING: HB 592 establishes a committee that looks at economic development activities in the state to see whether they are overlapping responsibilities and to see if essentially we couldn't be doing things better than the way that we are doing them today. The amendment establishes an additional committee that is to look at a community service program. What it puts in place is the mechanism whereby we would be able to access federal funds if the President's proposal for community service in exchange for education credits passes.

SENATOR COLANTUONO: I was just curious to know what the status of the economic development commission is that we passed, I think last session, and how this bill differs from that one?

SENATOR W. KING: The Economic Development Commission that was created in the last session was to look at the long-term economic needs of the state and to begin the process of constructing a long term economic strategy. This is going to just take a look at the programs that exist within the state to see if they are overlapping responsibilities, if there are ways to better fund the programs that we are currently undertaking and it doesn't really look out into the future in any way.

Amendment adopted.

Ordered to third reading.

HB 119-FN-LOCAL, an act relative to the administration and enforcement of the pesticides statutes. Environment Committee. Ought to Pass with Amendment. Senator Russman for the committee.

2838B

Amendment to HB 119-FN-LOCAL

Amend RSA 430:49 as inserted by section 1 of the bill by replacing it with the following:

430:49 Preemption of Local Regulation.

I. Administration and enforcement of this subdivision shall be implemented in an equitable manner throughout the state. This subdivision is of statewide concern and occupies the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this subdivision, no ordinance or regulation of local government, including but not limited to, an action by a local governmental agency or department, a county board of commissioners or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of those ordinances, laws or regulations are void and of no force or effect.

II. This section shall not be construed to invalidate any ordinance or regulation of a local government in effect on the effective date of this section. On and after the effective date of this section, any ordinance or regulation regarding pesticides considered by a local government shall be reviewed by the pesticide control board. The board shall provide the governing body with a written explanation either approving or disapproving the ordinance or regulation. The legislative body of the local government entity, by majority vote, may override the decision of the board.

AMENDED ANALYSIS

This bill gives authority over the use, regulation, sale, or transportation of pesticides to the division of pesticide control, department of agriculture.

The bill also allows local regulation in effect on the effective date of the bill to remain enforceable and allows localities to adopt such regulations after the effective date of the bill after review by the pesticide control board. The legislative body of a municipality may override any decision of the pesticide review board approving or disapproving a local ordinance.

SENATOR RUSSMAN: The bill, I am sure there will be some discussion about it, was controversial at the hearing and we had a very long and lengthy hearing about it. This bill arose from a small town out in, I believe, Wisconsin that passed an ordinance, to some degree, controlling pesticides and the use of pesticides. The case went all the way to the United States Supreme Court. The chemical industry and a number of others felt that they should have total control over that issue. The local

people in that small town, which is not unlike a small town in New Hampshire, felt that they shouldn't have say so over what was going to be used in their community. The bill as presented without the amendment gives the state of New Hampshire control. What has happened as a result of that Supreme Court case, in every state, groups and farm bureaus and others and the chemical industry have filed bills to try and get the states to say that the state will have total control over that issue. At the same time, we have heard from a large number of people on the other side of that that felt that while the state perhaps should have control over training of applicators and sale registration and transportation and things of that nature. When it came right down to it, what was going to be sprayed in your town, with your kids present, in your community, around your aquafer, maybe you ought to have some say so on that. The committee passed an amendment four to two. I think it was that was coming out of committee with ought to pass on the amendment which does gives the local legislative body the opportunity after running it by the state pesticide control board, the option of overriding it by the majority vote of the legislative body. So we would urge passage of the bill as amended. Now the issue, as I saw it, was that whether or not in your community, and of course one of the major arguments was that there was just not enough expertise at the local level for them to make an informed decision of whether or not they should be able to make a decision of what they want sprayed. That was the argument against it. I am trying to give you both sides here. Again and also, there were farms that came in and said that they have partials in three or four towns and they felt that they shouldn't be obliged to use different chemicals in different towns and that became an issue. Perhaps they may have four or five different orchards in four or five different towns. I think that in real terms, both sides here have way over reacted. Because since the beginning of time in New Hampshire, I think that it is six or seven towns have actually made ordinances effective as to pesticides. So since the beginning of time . . . there hasn't been any mass rush for people to run out and to say, gee we have to have pesticide control, and I don't think that there will be, in any event. Those ordinances actually dealt with set backs, how close you could get to aquafer and how close you could get to this or that or where it could be sprayed. It was an issue several years ago, I think it may have been Londonderry as far as the orchards go, and children that happen to wander through the orchards where the chemicals were being sprayed and things of that nature. I don't know if that in every town there is the expertise there; you would hope that there would be public hearings, that the farm community in those towns would be able to come and speak and the local people would be able to come and speak, and that an ordinance would be put together that would meet the needs of that particular community with their particular situation. We are spending more and more money on clean water as far as the chemicals that are in all of the drinking areas and the aquafers and it certainly, perhaps in some towns, whether it is Manchester or some other, they may feel that the runoff of pesticide or whatnot, may be such that they want other pesticides used. I think that certainly if there is a particular one that a given town doesn't want to let be used, then that should be up to the people in that community. I received a lot of mail from people in my district and I certainly feel that the people in my district are smarter than I am, and they feel that they are smart enough to have a say so on what is going to be used in their community and that the expertise is certainly available either in the towns or through consultants. So we would urge the bill ought to pass as amended.

SENATOR COHEN: Senator Russman, just a brief question. I just wanted to make sure that with the amendment, I recognized that the amendment says that the state board cannot overturn the decision of the towns legislative body. But if there were a referendum, initiative that passed in the town, that were not done by the selectman, the alderman, or what have you, if it were directly from the town, could the state board still override that or could they not?

SENATOR RUSSMAN: I think, that probably . . . well with the amendment, I think, that the local people would have the final say. If the bill were passed as it was proposed to us, I do not believe that the local people would have a say. I think that it is that simple, really.

SENATOR COHEN: Thank you, I just wanted that clarified.

SENATOR FRASER: Senator Russman, would you believe that probably next to the emissions bill that this has been one of the bills that I have received the most calls on in the last couple of days. I have a question. Would it be a fair statement that if the amendment was not adopted which would take all, I think, that you have acknowledged, it would take all of the authority, the decision making away from the local community?

SENATOR RUSSMAN: Yes.

SENATOR FRASER: There is plenty of information available to the community in the event that they wanted to make some changes from the state? Is that a fair statement?

SENATOR RUSSMAN: I don't believe that is the case. I think that if the bill passes as it was proposed to us the state would make all of the decisions. I realize that maybe it is a libertarian view to say that the local people ought to have control over what is being said. But, at the same time, without the amendment, the way that the bill was originally proposed to us, the state would virtually make all of the decisions. I might add that there are virtually hundreds and hundreds of chemicals available out there. I suspect that it wouldn't be that difficult for one farmer who farms in different towns to find one that was acceptable within the local community, that would be acceptable whereas another one might not perhaps be.

SENATOR FRASER: Senator Russman, would you agree with me that if the amendment was not adopted that the resources at the state level would still be available for the communities?

SENATOR RUSSMAN: I am not sure what you mean when you say resources?

SENATOR FRASER: I am talking about the expertise needed in order to make informed decisions.

SENATOR RUSSMAN: My answer would be is that there are no decisions to be made at the local level at that point, so it is not a question . . . they might be able to call up the state board and say, "gee we are going to be sprayed with this, what is it supposed to do?" They can tell them what it is going to do, but they won't have any say so whether or not they are going to be sprayed with it.

SENATOR LOVEJOY: Senator Russman, did the Farm Bureau testify on this at your hearing, and if they did, what was their testimony?

SENATOR RUSSMAN: Yes. The Farm Bureau strongly felt that the bill should be passed as presented.

SENATOR LOVEJOY: Thank you.

SENATOR BARNES: I rise to talk against the committee's report of ought to pass with amendment. I feel by some of the testimony and by some of the questions that have been asked here, it seems obvious to me that we have had in place in New Hampshire a good system that helps the farmers and helps the people in the state. The Farm Bureau, who I have respect for, they are in the business, which some of us aren't. They tell me and they tell us to leave it the way that it is, leave it with the state. We have a lot of dedicated people in our state who are selectmen and councilors in our cities and towns throughout the state. Having been one, I would have hated to have sat on that board in Raymond making decisions on this pesticide situation. I would much rather leave it with the experts that we have in Concord. I think that we are leaving the door open to extra expenses to the cities and towns. We have already heard testimony that yes we can do this and we can do that, but it might end up in court. The attorneys will make a little bit of money on it, but it is going to cost the towns some money to fight these cases. There is an old saying in district 17, "that if it ain't broke, don't fix it". I would ask my fellow members to please don't fix something that isn't broken.

SENATOR LOVEJOY: Mr. President, I rise to speak against the amendments. The Farm Bureau came and testified for the bill without the amendments. Many of our farms cross town lines and they would be subject if this is the case, or they could be subject to more than one set of rules on pesticides. I have had several calls from farmers in district six that have said, please don't meddle with this, keep it with state control. Now it is very unusual for me to get up and speak against local control, but in this case, I think that it makes a lot of good common sense that the state control and set the standards and the rules for pesticide use. The expertise is in the state and not in the local communities. I am afraid that this amendment will force the communities who don't know to get involved with pesticide regulations to take positions and those positions in many cases can be ill founded because of the lack of expertise. I certainly urge you to defeat the amendment to this bill and pass the bill as originally proposed. Thank you.

SENATOR W. KING: I will be brief. This is indeed a very difficult issue as you can tell from Senator Lovejoys remarks. He finds himself speaking against local control and often he is on the other side of that issue. The committee has toiled with this issue because we recognize fully that if you have 237 different regulations regarding pesticides that you are going to have a major problem in terms of the livelihood of people who are in the farming communities and other communities who use these pesticides. On the other hand, it is appropriate to allow communities some degree of latitude in terms of protecting their water supplies, protecting peoples' wells, protecting other important community assets from application of pesticides that might be harmful. I have to tell you that I think that ultimately what you see before you in the way of an amendment from this committee is a position for us to go to a Committee of Conference that will allow us to do just that, to give communities some authority to protect the environment in their community where it pertains to pesticides, but not to endanger the livelihood of people. You will note from the amendment that the communities don't get involved in issues

like transportation, issues like licensing, all of those are left within the purlieu of the state. And it is arguable whether or not that the amendment as written should be loosened some so that the state has even more authority. But, we felt that to go to a Committee of Conference with the House, we ought to have a position that would allow us to negotiate on behalf of the communities, some authority. So I ask you to adopt the amendment knowing that we are going to end up in a Committee of Conference on this and that there is latitude for us to negotiate further on it so that we allow communities some flexibility to protect their environment and to protect their water sources, and to enact minimal regulations, but to also recognize that the state is the ultimate arbiter when it comes to the issue of pesticides.

SENATOR COLANTUONO: I rise briefly to oppose the committee amendment and to support the original bill. I have many beautiful apple orchards in the town of Londonderry and they have called me to support the original bill and I made a commitment to them that I would. They repeated many of the same arguments that you have heard. I have one orchard owner who has orchards in several different towns and if such an amendment were to pass, and his different towns had different regulations, it would be very difficult for him to engage in his orchard and farming business. I also think that the amendment creates a dangerous precedent by allowing a town meeting or a board of selectmen or a city council to override the expert opinion of a state agency. I think that is just the opposite of the way that this state's rules should work. So I would urge the body to vote down the committee amendment.

SENATOR BALDIZAR: Senator Colantuono, I, too, have some people who own farms as their livelihood in my district and some of those have farms in several different towns. I spoke to several of them last night, as I am sure that you did as well as some of the other Senators. My question is, if I have to go before a town meeting in order to get approval to use the pesticide, what is the time frame? I mean, my people who called me to ask me to urge me to vote against the amendment and said that there were good things in the bill, that they thought that there were a very many good things in the bill, but that the amendment really created hardship for many of them. I am beginning to see that perhaps it really does. My concern is, if it is the fall season for instance, and they are ready to do whatever it is that they do for their crops, or it is spring, and they are ready to do their spraying and fertilizing, they would be delayed in their growing season and then their net result in their profit would delayed, if they had to wait until there was a ruling when we already have a state board set up to oversee these matters anyway.

SENATOR COLANTUONO: Yes, Senator Baldizar, that is an excellent point. I agree with you. It could create a real hardship. The point simply being is that all that the amendment deals with is a pesticide, the use of pesticides. The point of the matter is that pesticides are either dangerous to the environment or they are not dangerous. They are not dangerous in one community and they are dangerous in another. So that is why state wide control is the logical answer.

The Question is on the committee amendment.

A roll call was requested by Senator Wheeler.

Seconded by Senator Colantuono.

The following Senators voted Yes: W. King, MacDonald, Pignatelli, Russman, Shaheen.

The following Senators voted No: Lamirande, Fraser, Lovejoy, Currier, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Colantuono, McLane, Podles, Barnes, J. King, Bourque, Delahunty, Hollingworth, Cohen.

Yeas: 5 - Nays: 18

Committee amendment fails.

SENATOR LAMIRANDE: The amendment that I have basically puts the orginal bill back the way that it was except for the second part of it, section two. Everything was eliminated except the part that states that, "This section shall not be construed to invalidate any ordinance or regulation of a local government in effect on the effective date of this section." Which is to say that if there is some seniority in place now it would be grandfathered. That is the only addition to the bill that I am making. My concern was over the question of any local government having the ultimate, final vote and say. This would grandfather anything that is out there that is being operated properly at the present time.

Senator Lamirande offered a floor amendment.

2878B

Floor Amendment to HB 119-FN-LOCAL

Amend RSA 430:49 as inserted by section 1 of the bill by replacing it with the following:

430:49 Preemption of Local Regulation.

I. Administration and enforcement of this subdivision shall be implemented in an equitable manner throughout the state. This subdivision is of statewide concern and occupies the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this subdivision, no ordinance or regulation of local government, including but not limited to, an action by a local governmental agency or department, a county board of commissioners or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of those ordinances, laws or regulations are void and of no force or effect.

II. This section shall not be construed to invalidate any ordinance or regulation of a local government in effect on the effective date of this section.

AMENDED ANALYSIS

This bill gives authority over the use, regulation, sale, or transportation of pesticides to the division of pesticide control, department of agriculture.

The bill also allows local regulation in effect on the effective date of the bill to remain enforceable.

SENATOR LOVEJOY: Senator Lamirande, would you believe that I strongly support your amendment?

SENATOR LAMIRANDE: Thank you very much.

Floor amendment adopted.

Ordered to third reading.

Senator W. King in favor of HB 119.

Senator Russman in opposition to HB 119.

Senator Russman in favor of floor amendment on HB 119.

HB 172, an act relative to the oil discharge and disposal cleanup fund. Environment committee. Ought to Pass with Amendment. Senator Pignatelli for the committee.

2514B

Amendment to HB 172-FN

Amend the bill by replacing section 4 with the following:

4 Fee Charged at Time of Importation. Amend RSA 146-D:3, II to read as follows:

II. Any distributor [or any person who buys oil from a distributor without paying the fee required by this paragraph at the time of such purchase] ***who imports, or who causes oil to be imported into this state*** shall ***firs***t be licensed with the department of safety. A fee of $.007 per gallon of oil shall be assessed at the time of [sale in] ***importation into*** this state. [This fee shall be in addition to any road toll paid pursuant to RSA 260:32 and] ***All fees*** shall be deposited in the oil discharge and disposal cleanup fund established under this chapter. If the fund's balance becomes greater than $10,000,000, the fund assessment fees provided for in this paragraph shall be discontinued and only reestablished when the fund's balance is less than $5,000,000. Any distributor who imports [or any licensee who buys] ***or blends*** home heating oil which is subsequently sold as diesel fuel for the propulsion of motor vehicles shall report the fuel as required in RSA 146-D:3, III. Any person purchasing home heating oil for diesel use and not declaring this intent to the distributor [or licensee] at the time of purchase shall be liable in the same manner as the distributor [or licensee] would be.

SENATOR PIGNATELLI: HB 172 was the request of the Oil Fund Disbursement Board. The bill makes some technical changes in the language in which the board operates and it gives the Department of Safety, administrative jurisdiction over the oil discharge and disposal clean up rather than the Department of Revenue and Administration. The bill also allows owners of underground storage tanks to apply for funds to reimburse third parties for property damage when not covered by other insurance policies. The committee urges your support.

Amendment adopted.

Ordered to third reading.

HB 481, an act enabling municipalities to enact noise ordinances. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

2839B

Amendment to HB 481

Amend RSA 31:39, I(n) as inserted by section 1 of the bill by replacing it with the following:

(n) Regulating noise; provided, however, that no noise regulation shall have the effect of prohibiting or limiting a person in respect to activities operating prior to the enactment of the regulation.

AMENDED ANALYSIS

This bill allows municipalities to enact noise regulations, providing that such regulations do not interfere with activities operating prior to the enactment of the regulation.

SENATOR RUSSMAN: I am pleased to be able to bring before you another controversial bill. Somebody has to do the dirty jobs, I guess. In any event, this bill arose out of Hudson, I think it was. Yes, it's a good bill as Senator Colantuono will tell you. What happened there was that there was some kind of a plant. I want to say that it was a cement plant. They made cement forms and what happened there is that when the people moved in, the plant was running one shift a day. Well, they got the contract for the new tunnel in Boston and of course they started running 25 hours a day. And the people, well the plant seemed to be fine when they went to work because it only ran one shift a day, and when they came home, it ran all night long. It made it a little tough to sleep, I guess. In any event, they went to the plant and asked them to do something about it. Apparently the plant merely told them to get off of the property and that they weren't going to do anything about it; so, therefore, the bill comes before us which allows communities to regulate noise. There was some discussion in committee of whether or not communities already have that ability. But this bill was put in so that towns would have the right to regulate noise. The argument centered on two factors, primarily, one, whether or not this would somehow harm industry, and then the other one was that whether or not the people should have an opportunity to have some noise ordinance enacted. The committee came up with an amendment which is probably acceptable to neither side, but that means something in and of itself. But in any event, the committee doing that felt strongly that there was time needed for some type of Committee of Conference on the bill. Apparently the parties involved in the House have said that if the bill passes as amended, that there would in fact be a Committee of Conference. The bill as it stands now, grandfathers virtually everything and anything which of course doesn't solve the problem in Hudson and may actually eliminate some of the noise controls that perhaps may be in effect at this time. Personally, I think, that I happen to live in a quiet residential neighborhood, so I have not had the opportunity to know firsthand what it is like to have a lot of noise. I am sure that Senator Hollingworth, living at the beach in the summer, she probably can tell us a little more about what that may be like, I don't know. But, I have to admit in my travels, in my district, when I have asked people why did they happen to come to New Hampshire, I always say, "how long have you been here." and they would say so many years, and I would say, "why did you come here?" and they would reply, "that they liked the quiet life in New Hampshire". So that was obvious an issue of what affects the quality of life. At the same time, this plant, there is a similar one of it in Massachusetts but it is a lot less noisier because apparently, they were required when it was built or what have you, to have some kind of either insulation or enclosed something to keep the noise down. So another plant went over the border operating in Hudson without the benefit of any type of noise control because New Hampshire doesn't have that evidently. So I believe, that there is still some work that needs to be done on the bill and I would hope that it does go to a Committee of Conference. There are some temporary situations where highway building is being done and a plant may be needed for six months to a year in order to actually construct the highway and those certainly need some type of exemption. But, it would be my hope that the bill could pass and that a Committee of Conference could resolve some of those issues. I would be happy to answer questions on this bill. Again, I think the vote was four to two if I am not mistaken on this bill, or five to one, I am not sure which one it was.

SENATOR LOVEJOY: Senator Russman, I am curious to know that part of this bill issues permits for tattooing facilities and I was wondering if the noise coming from the kicking and screaming of the facilities might be bothersome?

SENATOR RUSSMAN: It is the kicking and the screaming that was one of the major problems here. I am not sure what bill, which bill you are on, what number are you on? Oh, that is . . . this is the list of the things that the towns can regulate. As you can see, perhaps that tattooing situation is what helped to get this started, I am not sure.

SENATOR LOVEJOY: In watching the development of the Pease Development Authority and the potential use of the Pease Air Base for air use and hearing some objections from some people as to noise levels, how would this affect the future and potential use of Pease? For instance, if a town says that they don't want airplanes flying over our community and Manchester?

SENATOR RUSSMAN: Well, frankly, I am not so sure that they can regulate that situation, where outside the town like that I don't know the answer to your question for certain. I really don't. Perhaps if it does go to Committee of Conference that is something that needs to be addressed. I know that there was another bill involved about something to do with race tracks because several towns away, it would literally make their windows rattle when certain things happened at this race track, drag strip or whatever it was. But I mean there were a variety of things raised relative to noise and the committee ended up saying that perhaps there should be some regulation. And I think that on the airplane thing, I think the federal law supercedes that. That is my understanding. But again, I can't swear to it that that is the fact. So I don't think that the airplane noise is something that would be regulated under this bill. I do believe that it is the air space situation, that the feds would be the ones to control that. That is my understanding. I can verify that for you if it ends up in a Committee of Conference.

SUBSTITUTE MOTION

Senator Lamirande moved to substitute re-referred for ought to pass with amendment.

Division vote.

Yeas: 10 - Nays: 13

Motion of re-referred fails.

Question is on the committee amendment.

Adopted.

Ordered to third reading.

HB 597, an act relative to the New Hampshire Native Plant Protection Act. Environment committee. Ought to Pass. Senator Lamirande for the committee.

SENATOR LAMIRANDE: This bill requires the Department of Resource and Economic Development to establish programs to ensure the protection of threatened plant species in New Hampshire. The agency will inventory and identify these rare plants with the assistance of a public, private advisory council. It also will recommend measures to protect threatened species. Private property owners will not be affected by this legislation. And it should be pointed out that this bill was supported by

diverse groups such as the BIA and the Audubon Society. The committee voted unanimously ought to pass.

Adopted.

Ordered to third reading.

HB 674-FN, an act establishing an enhanced emissions inspection and maintenance program and requiring a diesel emissions study. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

2849B

Amendment to HB 674-FN

Amend RSA 268:14 as inserted by section 2 of the bill by replacing it with the following:

268:14 Program Evaluation and On-Road Testing.

I. The department shall conduct an on-road emissions testing program. Subject vehicles that have previously passed emissions inspection and fail an on-road test shall be required to pass an out-of-cycle follow-up inspection.

II. In order to obtain statistical data for purposes of analysis and program evaluation, a representative random sample of 0.1 percent of vehicles subject to emissions inspection in a given year shall be given a state administered or monitored IM240 mass emissions test, or EPA approved equivalent, at the time of initial inspection.

III. The department of environmental services, in consultation with the department of safety, shall evaluate the program on an annual basis to determine compliance with the Clean Air Act and EPA regulations on inspection/maintenance program requirements, section 51.353 and amendments thereto, relating to reductions in emissions and the compliance demonstration, and section 51.351 and amendments thereto, relating to the enhanced vehicle inspection performance standard. The findings of this evaluation shall be submitted to the advisory committee.

Amend RSA 268:16, XII as inserted by section 2 of the bill by replacing it with the following:

XII. Establishing procedures for on-road testing and program evaluation as provided in RSA 268:14.

Amend RSA 268:20, I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) Four senators, appointed by the senate president, at least one of whom shall reside in the program area.

SENATOR RUSSMAN: Now this is a relatively simple bill that a . . . well I figured that I might as well try a different tactic on this one. Now in all seriousness, I am happy to be able to ask for your support today on a clean air act. This bill has probably been one of the most studied bills that has come down the pike in a long time and I think that the House has done a lot of work in terms of the E & A committee in terms of trying to make sure that everybody possible in interest could be met in terms of small businesses, the towns, and the business associations. The business and industry association strongly favors the bill, the New Hampshire Lung Association, a whole host of businesses, Associated General Contractors of New Hampshire, Audubon, New Hampshire Petroleum council, New Hampshire Auto Dealers, New Hampshire Automobile Association. I could go on and on with dozens and dozens virtually of groups that are in support of the legislation. I mean the issue, frankly, is clean air. It is also tied to the federal government in terms of a rather sub-

stantial sanctions that will be imposed. If we pass this, we come up with our own program and we won't have one that will be forced down our throats or mandated to us by the EPA or the federal government. This is giving us an opportunity with the Department of Safety working hand and hand with the Department of Environmental Services to come up with a bill that really is a good bill and it affects essentially the minimum number of people that it realistically should affect. As you know, Merrimack county was passed in the House, it is still in the bill. We ask that you leave it in the bill, there is a serious . . . that county there was the only county available for credits in terms of buying and selling credits for businesses that want to expand in New Hampshire, and I think that that is an important component of the bill. I would ask that you pass the bill as it has been amended out of committee and see that it passes back to the House and they will concur, hopefully, with what we have done and support the legislation. You may have some questions on it and I will be happy to answer your questions.

SENATOR BARNES: Senator Russman, where are the exemptions or aren't there any exemptions on this?

SENATOR RUSSMAN: Exemptions for what?

SENATOR BARNES: Exemptions for the emissions testing?

SENATOR RUSSMAN: Well, for example, there are some exemptions, for example, on the cost for local vehicles. An example in Merrimack county, we exempted the cost of towns and municipalities having to have to pay for the testing and things of that nature. I don't know if there is something that you are getting at that I don't know about, you know, give me the benefit of telling me what it is and I would be happy to try to respond to it, but I don't know what you are getting at.

SENATOR BARNES: I want to make it perfectly clear that I agree with all of the work that you have done with the clean air, but I have heard that there are exemptions, certain vehicles such as 18 wheelers are not included and I didn't see that going through here, I don't see where that is written in and I don't understand. Would you believe, why aren't the 18 wheelers included? They create more of a clean air problem than little old grandma driving to church on Sunday?

SENATOR RUSSMAN: In terms of particulates, yes. And obviously, I assume that you are referring to the big diesel trucks that we see going up and down the road with the black smoke pouring out?

SENATOR BARNES: The ones that belch out and smell, yes.

SENATOR RUSSMAN: Believe it or not, that does not have anything to do with the problem that the clean air addresses. What you are talking about is particulates. Appearance-wise there is no question that it smells bad and it looks bad, but in terms of knocks and docs and that type of thing, it doesn't play a part. There is a study also as to diesels and what should be done with those, but it is something different than the Clean Air Act and it is something that is different than is being addressed in this type of legislation. I feel the same way that you do. That appearance- wise, it looks like one of those trucks must take the same as 1,000 cars probably, but the reality of it in terms of the chemicals that we are trying to get to, the docs and the knocks, the diesel is not a contributive, to speak, of to that situation and that is why they are not even included as part of that. It is essentially the smaller gasoline cars and small trucks that we are talking about.

SENATOR BARNES: So the answer to my question about exemptions is that there is nothing exempted in here and that diesels aren't in here because they are not part of the problem, so that is why there is nothing in here . . . there is nothing in this bill that has a listing of anything that is exempted from this emission test, is that correct?

SENATOR RUSSMAN: That is true, yes.

SENATOR WHEELER: Senator Russman, in your deliberations on this issue, was any consideration given to alternative fuels such as propane and electric cars and the effects of them coming on line in the future and reformulated gas and other ways to reach attainment of federal guidelines?

SENATOR RUSSMAN: Yes, and those . . . there are two pieces of legislation that are out there still for study committees relative to alternative fuel vehicles and what part they may play in the . . . this is really only one component of the whole Clean Air Act. I mean, obviously, the stationary sources and other types of things are going to play a large role in this and this is just one piece of that pie, if you will. I mean the issue also is . . . and I think probably why you see the BIA and others, if we don't each contribute something ourselves for the reduction, then industry has to do that much more. I mean it struck us that for the person anywhere, it is easier for them to pay $15 or $20 to have their tail pipe sniffed and to have a job to go to than it is to not have any emissions test done, but not have any place to go to work because the plant that they are working in couldn't meet the standard and had to go to another state. So I mean, this was essentially . . . we are all part of the problem, and it is all of us trying to be the solution.

SENATOR WHEELER: I already pay $20 because I am in the dirty dozen for the less complicated test. What is this emissions test expected to cost for each test?

SENATOR RUSSMAN: We believe it to be somewhere around $20 to $25.

SENATOR WHEELER: Thank you.

SENATOR PODLES: Senator Russman, I represent three towns in the Merrimack county and originally Merrimack was not included and the House included it, could you tell me why your committee decided to leave Merrimack out?

SENATOR RUSSMAN: Yes, I would be happy to do that. At one point the whole state was considered, frankly, because people felt strongly that why should somebody from Berlin perhaps that drives down to Concord not be part of it. But for a variety of reasons and some of what which I suspect were political and the Northern part of the state, they were what they call, essentially they were in an okay area as opposed to the southern part of the state. But Merrimack in the large part was kept in because it is the only county which could potentially have some emissions credits to buy and sell for industries that want to come here. The problem is going to be that if an industry wants to expand here, somewhere they have to come up with a reduction somewhere else. Merrimack county, it would be an emissions credits available, not a lot frankly, but some. It would be available to buy so that the other industry could expand. So if anybody that wants to come here is going to have to deal with that type of problem. It is going to make it more difficult, but that was the only county that credits would be available. So that is the primary reason that that was kept in the act. I think that it is an important component as far as . . . if we want to talk about jobs and whatnot and industry, I mean, that is one of the ways that we help, I think. It is a relatively small price to pay for that.

SENATOR DELAHUNTY: Senator Russman, a few years ago, certain communities were forced into this emissions inspection program and I have several in two of my communities that had to make an investment in the program and were told to make the investment and now are doing inspections and emissions control. Has any consideration been given to these people who made the investment and what happens to that investment that they made? Where does that leave them now, can they continue to give inspections or what?

SENATOR RUSSMAN: That is a very good question, really. I think that for the people who already have the machines, two things. One, they have already bought them and they probably bought them when they were cheaper and they depreciated them so that they have some tax advantage that used them. At the same time, they are still going to need and they already have a leg up on garages because they are going to need something like that to diagnose what is wrong with the car and to see if it will actually pass the test. So they will clearly be able to continue to use those and will be using those and perhaps, as I say, will not have to go out and buy other equipment because they already have that there and they probably already appreciated it and to actually conduct the test and to get a result. As I say, the New Auto Dealers and the New Hampshire Petroleum Institute are very much in favor and very supportive of the bill. Because they frankly, some of them see this bill as actually getting some of these garages more work because cars that won't pass are going to have to be tuned up and have work done to their cars. So actually they hope to see that as a money making situation particularly for those garages that already have them and have already paid.

SENATOR DELAHUNTY: Thank you, Senator.

SENATOR COLANTUONO: About the main concern that some of my constituents have had is the availability of testing facilities, so can you tell us how many that there will be and what the approximate wait will be? My constituents are concerned that they are going to have to wait half a day in line to try and get their cars tested?

SENATOR RUSSMAN: Actually the way that the contract will be written is that there is hopefully, I think, it is something like a half an hour or even less as far as maximum wait, fifteen minutes or something like that that they would have to wait. Whoever puts it in is going to probably have to put in multiple bay situations to get cars through and there would be one within a few miles where anybody would live in the southern part of the state. If it would have been in the North country, that was one of the concerns about having to drive great distances to get to one of these testing places, but in the southern part of the state, that should be no problem.

SENATOR COLANTUONO: Good. Do we know from the bill how many stations that there will be?

SENATOR RUSSMAN: I think that there are 20 or 30. I probably have it in my notes here if I can just look quickly to see if I can locate it. I know that it would be at least 10.

SENATOR LOVEJOY: Senator Russman, are you aware that in designating Strafford county as an area that needs remediation that the two testing stations were located in the seacoast, that one of them was along route 95 in Portsmouth and the second one was along the beach area in Rye. And that from those two monitoring stations, Strafford county was included as an area that needs remediation. I think that . . . and were you

aware that the Durham town council has taken issue as to where those monitoring locations are and has called for a retesting, and if you are, has the committee made any comments on it?

SENATOR RUSSMAN: All that I can tell you is that it is my understanding that the delegation from Durham has been very much in favor of the representatives. Matter of fact, Amanda Merrill, one of the people who comes from up in that area, has worked very diligently and very hard on that bill. It is my understanding that they are very supportive of it at this time. As far as the location of the different testing areas, I believe that the Department of Safety does have something to say as far as the location. And you are talking about where the tests have already been conducted for the air quality, not the test . . .

SENATOR LOVEJOY: Yes, in order to include Strafford county.

SENATOR RUSSMAN: My understanding is that it is actually bigger than that, that we are part of a transport area. The whole northeast corridor, and that it is not just that component that enters into it, but it is a larger component of our location relative to metropolitan Boston and New York and so on and so forth. That is part of the reason. But I know that there always could have been more. But, my understanding is, that based on the data that's available, that was considered an area of non-containment for Strafford county, based on population as well.

SENATOR SHAHEEN: Senator Russman, I would like to respond to Senator Lovejoy's question.

SENATOR RUSSMAN: I defer to Senator Shaheen.

SENATOR SHAHEEN: Whenever Senator Russman defers to me, I always like that. I just wanted to respond to your question about Durham because you are right. Durham initially had a question about how the monitoring was done. In fact, Representative Merrill and I asked the head of the Air Resources Division to come down and to meet with the town council and the town administrator in Durham to try to respond to those questions. What they didn't understand was that according to the federal Clean Air Act, that when the monitoring is done in a particular zone and this happens too, Strafford county is included with the NPO, that included Rye. There are two issues here, one is that you have to address where the most hazardous reading is. I am not using the right term here. But, wherever the reading is the worst, the program has to address that worst reading. So even if that reading had been done up in Farmington, for example, to deal with Strafford county we still would have to had to respond to the reading that was done down in Rye. The other issue is that you are put into the Clean Air Act on a county wide and an NPO wide basis. And because part of Strafford county is part of the non attainment area, all of Strafford county area has to be included. That is mandated again, by the federal Clean Air Act.

SENATOR MCLANE: I had a call this morning from the President of the Audubon, Dick Henry who has worked long and hard on this bill. I assured him that although I came from the heart of Merrimack county that I was strongly in favor of the Clean Air Act. As Senator Shaheen has described, the emissions trading bill which is 571 is before the Governor now and it is very, very, important that Merrimack county be included in the bill before you because otherwise, the seven other counties would have no credits to trade if they wanted to take on new industry. But the reason that I strongly support this bill is for health reasons. Having discussed it with many doctors and such, and I think that

there is just one fact that I would like to add, and that is that one out of nine people in New Hampshire suffer from asthma. About twenty years ago, only one out of thirty suffered from asthma. For someone who has that problem, clean air means a great deal. I think that it is a popular measure despite the sort of vocal objections of those people who don't want to get their cars tested. A survey of the general public shows that 70 percent of the people favor the Clean Air Act. A recent survey done by AAA shows that 85 percent of their members favor the Clean Air Act. So as the Senator from Merrimack county, I rise in very, very, strong support.

SENATOR COLANTUONO: Further questions that my constituents had was regarding the older model cars that are kept for hobby and so forth. I think I had one gentlemen talk about some kind of vehicle that was built in the 1970's and he only takes it out for parades and shows and things like that. So was there any accommodation made in the bill for that situation?

SENATOR RUSSMAN: The older model cars, and I happen to have a 1972 car, but the older models pass a different test. So they don't have to pass the test that the newer model cars have to pass. They have a stationary source and it actually takes that into consideration in terms of the fact that it is an older vehicle. The only thing is if it has been tampered with in terms of if it has been you know, purposely, air pollution control equipment removed from it, that could be a problem in all honesty. But if it is a stock, like an antique car or stock type thing that they have put back or restored or whatever, there shouldn't be any problem because the older test has a lower standard to accommodate them.

SENATOR LAMIRANDE: I just want to rise in strong support of this bill. Isn't that a novelty, Rick, I am rising in strong support of this bill that you are presenting here? I would not even be opposed to a statewide testing, even if it did include Coos county, because I feel that one of the largest industries that New Hampshire has is tourism and tourism depends largely upon people from the neighboring states and the neighboring country, Canada, to come to New Hampshire and hike in our woods and breathe our clean air and they certainly don't want to be looking at dead trees and looking at forests through fog. So I am in strong support of this bill. I feel that New Hampshire's economy depends on a healthy environment, without it many jobs will be lost. I am hoping that everyone will vote ought to pass.

Amendment adopted.

SENATOR FRASER: Mr. President and members of the Senate, the amendment that is before you at the moment, I am introducing it to you at the request of the New Hampshire Municipal Association. The New Hampshire Municipal Association is concerned about 28-A constitutional problems, in that it is an unfunded mandate requiring the vehicles of the municipalities to be inspected in the absence of . . . they would have to up their speed in having those repairs made. I don't have any strong feelings because I am not an attorney, but it seems to me that probably the New Hampshire Municipal Association has some grounds for being concerned about violations of that constitutional amendment that we adopted back in, I believe, 1986. As I say, I wish that you would take a look at it. I would like to have with your permission, Mr. President, I would like to defer to Senator Russman, with the one qualification that I unalterably support HB 674 as it was crafted. In fact, I am proud to say that I am one of the co-sponsors. But we do have some concerns about 28:A and possibly the Chairman of the committee could address those for us.

Senator Fraser offered a floor amendment.

2877B

Floor Amendment to HB 674

Amend RSA 268:4, II as inserted by section 2 of the bill by inserting after subparagraph (b) the following new subparagraph:

(c) Vehicles owned by any political subdivision located in any county for which vehicle emissions testing is not mandated by the EPA as a means of compliance with the Clean Air Act.

SENATOR HOLLINGWORTH: Senator Russman, this amendment does not prevent other areas that would come under the requirement of the EPA because if they had a problem with the clean air they also would be included. In other words, this is to prevent a mandate of 28-A and only that?

SENATOR RUSSMAN: Yes. But I think that there is more to it than that. The House rejected this same idea. What we are essentially saying is that we are willing to pay to have their vehicles tested, but now they want us to pay to repair them. We don't get this in the other counties because it is a federal mandate, so it doesn't come to the state. But I think that we are being okay in saying that we are willing to pay for the test. But how far do we have to go? I mean, you let your vehicles go down hill, we all should pay for that? I think that that goes beyond the scope of 28-A. I think that if the test is required and we are willing to pay for it, fine, let us pay for it. But if the vehicles actually don't pass and are polluting the air and they need repair or maintenance, I think that the community or town ought to do that and I don't think that that falls . . . it is kind of like doubling up on the 28-A thing. I think that us willing to pay for them should be sufficient and I don't think that they should get special treatment beyond that. I think that the amendment, with all due respect, ought to be defeated. I think that we are already doing enough, frankly.

SENATOR SHAHEEN: Senator Russman, could you just address the issue that is raised in this amendment about who's mandating this emissions testing and whether it in fact is being mandated by the federal government, which I believe that it is, as opposed to the state which is the contention in this amendment?

SENATOR RUSSMAN: Well either way if you take the position that the rest of the counties don't get any special treatment because it is a federal mandate, then the issue is narrowed to whether or not Merrimack county should get special treatment or special privileges. Because the state has included that, because it is credits that we have talked about, they have included that. So I feel that we are already giving them some special credit because we are saying that we are willing to pay for the test to avoid this 28-A problem, if in fact it is a problem. I mean we have already compromised by saying, look if it is a problem, we will pay for it, if it is going to be raised. I don't think that we need to go beyond that and change their oil, you know?

SENATOR CURRIER: Senator Russman, if we pass this amendment, is it possible that a police car that doesn't meet the standard and is polluting and is chasing another car that doesn't, to arrest them?

SENATOR RUSSMAN: That could happen.

SENATOR W. KING: We hear from time to time from our constituents when they call us up and they say that we pass these laws and then exempt ourselves from them or exempt other government agencies from

them, whether that is on the federal level or the state level. I think that we are opening ourselves to that criticism here once more. We are asking the citizens of the state of New Hampshire to pay a price, all be it a small one, for clean air. We must not then turn around and say, "but government doesn't have to do that". I urge you to defeat this amendment.

Floor amendment fails.

Ordered to third reading.

HJR 4, a resolution stating that it is the intent of the general court that the Division of Public Health services and the Fish and Game Department protect the water quality of shellfish producing waters and restore shellfish resources to the public as soon as possible. Environment committee. Ought to Pass with Amendment. Senator Pignatelli for the committee.

2811B

Amendment to HJR 4

Amend the bill by deleting the last paragraph after the resolving clause.

SENATOR PIGNATELLI: This resolution urges immediate state action to open the shellfish beds off of the New Hampshire coast. It calls for three different state agencies, Fish and Game, Public Health and Environmental Services to craft a plan to monitor the water quality and reviving what was once a popular sport that brought hundreds of thousands of dollars into state coffers through license fees. The committee adopted an amendment offered by Senator Cohen to delete references to funding and is pleased that the Senate budget will add funds to the budget for increased water quality testing. The committee urges your support.

Amendment adopted.

Ordered to third reading.

HB 339, an act relative to reporting requirements for elected officials and candidates. Executive Departments and Administration. Ought to Pass with Amendment. Senator Colantuono for the committee.

2853B

Amendment to HB 339

Amend the bill by replacing all after the enacting clause with the following:

1 Gift and Honorarium, Redefined. Amend RSA 15-B:1, II-IV to read as follows:

II. "Gift" means any money or thing of value received in excess of [$100] ***$25.*** "Gift" shall not include contributions as defined in RSA 664; a commercially reasonable loan made in the ordinary course of business; or a gift received from a member of the person's immediate family or from a person's parent, aunt, uncle, grandparent, great grandparent, sibling, son or daughter, or from the spouse of any such relative.

III. "Honorarium" means a payment in excess of [$100] ***$25*** to an elected official for services on which no fee is set or legally obtainable.

IV. "Testimonial" means an affair of any kind or nature including, but not limited to, cocktail parties, breakfasts, luncheons, dinners, dances, or picnics intended to raise funds on behalf of an elected official. ***Net income from testimonials shall be that amount remaining after all reasonable expenses have been paid.***

2 Disclosure Requirement for Income Received by Elected Officials. Amend RSA 15-B:2 to read as follows:

15-B:2 Disclosure Required. Every elected state and county official, including members of the general court, shall file a statement annually with the secretary of state by June 15 showing any income received by the official during the preceding 12 months ending June 1 from testimonials, gifts, honorariums, donations, or any other source, when the receipt of such income is attributable to the office held by the official. This report shall not include campaign contributions, income received by the official in his regular course of employment or business or salary, mileage, or expense payments made to the official by the state or county for performance of official duties for the preceding 12 months. The statement shall give the ***full*** name and ***post office*** address of [any person or other source] ***all contributors in alphabetical order*** who gave more than [$100] ***$25*** of such income and the date received***, and any listing of income attributable to the office held by the official which exceeds an individual contributor's aggregate total of $100 during the reporting year shall also be accompanied by the contributor's occupation and principal place of business, if any.*** The statement shall be a public record under RSA 91-A. For the purpose of this section, "income attributable to the office held by the official" means [that] ***any gift, honorarium, or testimonial net*** income or any thing of value which is received by an official in his official capacity, and which would not have been received by the official but for the office he holds.

3 Information Required on Financial Disclosure Form. Amend RSA 15-B:3 to read as follows:

15-B:3 Financial Disclosure Form. Each elected official shall be required to file a statement under this chapter in substantially the following form. No spaces shall be left blank on the form; however, "not applicable" may be entered when appropriate.

STATEMENT OF FINANCIAL INTERESTS FOR TESTIMONIALS, GIFTS, AND HONORARIUMS

(use additional paper as necessary)

List each source ***of income from any gift, honorarium*** or testimonial as defined in RSA 15-B:1[,]. [for which the aggregate amount of donations and contributions is more than [$100] ***$25:***]

Provide the full name and post office address of all contributors in alphabetical order who gave more than $25. In addition, provide the occupation and principal place of business of all contributors who gave more than $100.

Source (Name [and], ***Post Office*** Address ***and, if Applicable, Occupation and Principal Place of Business)***	Amount	Date Received
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
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_____	_____	_____
_____	_____	_____

Date Report Filed: _____ Signature of Official _____

4 Application. The provisions of this act relative to the filing by elected officials of statements of financial interests for testimonials, gifts, and honorariums shall apply beginning with the filing period for statements which must be filed by June 15, 1994.

5 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill changes the reporting requirements which elected officials must meet for the income which they receive from gifts, honorariums, and testimonials, beginning with the statements which must be filed by June 15, 1994.

SENATOR COLANTUONO: This bill does two things, the original bill does two things. It changes the reporting requirements under RSA 15-B by which we are all required to report gifts, honorariums and testimonials. By making it consistent with the election laws, by lowering the amount from $100 to $25. So that any gift or honorarium we receive of over $25 has to be reported each year. The original bill also had a piece that amends the election reporting laws to make it clear that the reporting period for election expenditures begins January 1 of each year, rather than on the day that we file for office. Because of the way that our committee worked on this bill, we were originally going to put that second piece on another bill, so it didn't get to appear in the calendar amendment so we intend to offer that as a floor amendment, but the floor amendment is part of the original bill. We made one minor language change in that floor amendment. The main part of the bill, the 15-B part also makes it clear that when you have a testimonial, you only have to report the net income from that, but you do have to report the total of the income.

SENATOR CURRIER: Originally the Executive Departments and Administrations committee had all intentions of acting on the additional pieces of legislation dealing with the election reform; unfortunately, because of the time constraints we actually ran out of time. The reason for the floor amendment, which is being passed out right now, is as Senator Colantuono has indicated, we were planning on a consolidation of these other bills with a litany of amendments to come up with one or two pieces of legislation dealing with the election reform bill. So what we did as a committee yesterday afternoon, was to vote to rerefer the rest of these bills. But it is important that the part that we took off of HB 339 be reinstated in this floor amendment. The other bills we as a committee will be addressing over the summer and bringing back, I guess an omnibus bill dealing with all of these other election reform issues.

Amendment adopted.

SENATOR COLANTUONO: I have already addressed this floor amendment. Please adopt it.

Senator Colantuono offered a floor amendment.

2876B

Floor Amendment to HB 339

Amend the bill by inserting after section 3 the following and renumbering the original sections 4 and 5 to read 5 and 6, respectively:

4 Reporting Requirements for Candidates. Amend RSA 664:7 to read as follows:

664:7 Reporting by Candidates. Each candidate at the primary or general election for governor, councilor, state senator, representative to general court, or county officer, who has expenditures ***or receipts*** exceeding

$500, shall file statements before and after an election in like manner and detail as prescribed in RSA 664:6, II, II-a, III, IV, and V, excepting, however, the expenditures of political committees of the party to which the candidate belongs in elections other than primaries. ***The reporting period for the statement filed in the manner and detail prescribed in RSA 664:6, II shall begin on January 1 of the year in which the statement is filed, or when candidacy is publicly announced by the candidate, whichever comes first.***

AMENDED ANALYSIS

This bill changes the reporting requirements which elected officials must meet for the income which they receive from gifts, honorariums, and testimonials, beginning with the statements which must be filed by June 15, 1994. The bill also changes the initial reporting period for candidates relative to their receipts and expenditures so that it begins on January 1 of the reporting year, beginning with the reporting period beginning on January 1, 1994.

Floor amendment adopted.

Ordered to third reading.

HB 510, an act relative to certificate of election blanks, write-in votes, and the emergency interim succession act, and establishing a committee to study the enforcement of the election laws relative to political expenditures and contributions. Executive Departments and Administrations committee. Re-refer to committee. Senator Currier for the committee.

SENATOR CURRIER: I move the committee report of re-refer to committee.

Committee report of re-referred is adopted.

HB 514, an act amending the election laws relative to the political calendar and election ballots and the registration and reporting requirement for candidates and political committees. Executive Departments and Administration s committee. Re-refer to committee. Senator Currier for the committee.

SENATOR CURRIER: I move the committee report of re-refer to committee.

Committee report of re-referred is adopted.

HB 531, an act prohibiting persons from running as candidates on more than one party ticket in state primary and general elections. Executive Departments and Administrations committee. Re-refer to committee. Senator Currier for the committee.

SENATOR CURRIER: I move the committee report of re-refer to committee.

Committee report of re-referred is adopted.

HB 541, an act relative to the reporting procedures required for disclosure of contributions for candidates and political committees in state elections. Executive Departments and Administrations committee. Re-refer to committee. Senator Currier for the committee.

SENATOR CURRIER: I move the committee report of re-refer to committee.

Committee report of re-referred is adopted.

HB 690-FN, an act allowing and regulating limited liability companies and professional limited liability companies. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

2830B

Amendment to HB 690-FN

Amend RSA 304-C:3, III as inserted by section 1 of the bill by replacing it with the following:

III. Shall not be the same as or deceptively similar to the name of any corporation, limited partnership, proprietorship, New Hampshire investment trust, voluntary association, trade name, business trust or limited liability company reserved, registered, formed or organized under the laws of New Hampshire or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign partnership, or foreign limited liability company in New Hampshire or the name of an agency or instrumentality of the United States or this state or a subdivision thereof or of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of such party; provided, however, that a limited liability company may not register under any name that is the same as or deceptively similar to the name of any domestic or foreign corporation, limited partnership, proprietorship, New Hampshire investment trust, voluntary association, trade name, business trust or limited liability company reserved, registered, formed or organized under the laws of New Hampshire without the written consent of the other corporation, limited partnership, proprietorship, New Hampshire investment trust, voluntary association, trade name, business trust or limited liability company, which written consent shall be filed with the secretary of state; and

Amend RSA 304—C:5, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) A registered agent, which agent may be either an individual resident of New Hampshire whose business office is identical with the limited liability company's registered office, or a domestic corporation, or a foreign corporation authorized to do business in New Hampshire having a business office identical with such registered office.

Amend RSA 304-C:5, II and III as inserted by section 1 of the bill by replacing them with the following:

II. A limited liability company may change its registered office or registered agent, or both, by filing with the secretary of state a statement setting forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed;

(d) The name and address of its current registered agent; and

(e) If its registered agent is to be changed, the name and address of its successor registered agent.

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

III. A registered agent of a limited liability company may resign as registered agent by executing and filing a written notice of resignation with the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its principal office. The appoint-

ment of the registered agent terminates 31 days after filing of the notice with the secretary of state or on the appointment of a successor registered agent, whichever occurs first. The notice of resignation may include a statement that the registered office is also discontinued.

Amend RSA 304-C:12, I as inserted by section 1 of the bill by replacing it with the following:

I. In order to form a limited liability company, one or more authorized persons shall deliver a certificate of formation and the certificate required by RSA 421-B:13, I-a to the secretary of state for filing.

Amend RSA 304-C:15, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Certify that the certificate of formation, amendment, or cancellation, any judicial decree of amendment or cancellation, the certificate of merger, or the restated certificate has been filed by endorsing upon the original certificate the word "filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

Amend the introductory paragraph of RSA 304-C:64, I as inserted by section 1 of the bill by replacing it with the following:

I. Before doing business in New Hampshire, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall file with the secretary of state the certificate required by RSA 421-B:13, I-a and an application for registration as a foreign limited liability company, setting forth:

Amend RSA 304-C:64, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a certificate of existence (or document of similar import) duly authorized by the secretary of state or other official having custody of limited liability company records in the state or country under the law of which it was formed, issued not more than 60 days before the application is received by the secretary of state;

Amend RSA 304-C:65, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Certify that the application has been filed by endorsing upon the original application the word "filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud.

Amend RSA 304-C:66, I as inserted by section 1 of the bill by replacing it with the following:

I. A foreign limited liability company may register with the secretary of state under its name, provided however:

(a) The the name must be one that could be registered by a domestic limited liability company;

(b) The the name under which a foreign limited liability company is registering must include the words "limited liability company" or the abbreviation "L.L.C.";

(c) That a foreign limited liability company may use a fictitious name under which it may register and transact business in this state if its real name has been determined by the secretary of state to be unavailable;

(d) That a foreign limited liability company may not register under any name which is the same or deceptively similar to the name of any domestic or foreign corporation, business trust, proprietorship, New Hampshire investment trust, voluntary association, trade name, limited liability company, foreign partnership, or limited partnership reserved,

registered, qualified to do business, or organized under the laws of New Hampshire or the name of an agency or instrumentality of the United States or this state or a subdivision thereof, or any political party recognized under RSA 652:11 unless written consent is obtained from the authorized representative of such party; and

(e) That a foreign limited liability company may register under any name that is the same as or deceptively similar to the name of any domestic or foreign corporation, limited partnership, proprietorship, New Hampshire investment trust, voluntary association, trade name, business trust or limited liability company reserved, registered, formed or organized under the laws of New Hampshire if:

(1) The applicant files with the secretary of state the written consent of such other entity or holder of a reserved or registered name and one or more words are added to make the name applied for distinguishable from the other name; or

(2) The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

Amend RSA 304-C:66, II(b) and the introductory paragraph of III as inserted by section 1 of the bill by replacing it with the following:

(b) A registered agent, which agent may be either an individual resident of New Hampshire whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, or a foreign corporation authorized to do business in New Hampshire having a business office identical with such registered office.

III. A foreign limited liability company registered to transact business in this state may change its registered office or registered agent, or both by delivering to the secretary of state for filing a statement of change that sets forth:

Amend RSA 304-C:66, III(d) as inserted by section 1 of the bill by replacing it with the following:

(d) The name and address of its current registered agent;

Amend RSA 304-C:66, VII as inserted by section 1 of the bill by replacing it with the following:

VII. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed or on the appointment of a successor registered agent, whichever occurs first.

Amend RSA 304-C:73, I and II as inserted by section 1 of the bill by replacing them with the following:

I. If the secretary of state determines that one or more grounds exist under RSA 304-C:72 for revocation of a registration, the secretary shall send written notice of the secretary's determination under RSA 304-C:72 to the foreign limited liability company and shall mail a copy of such notice at the same time to the department of revenue administration.

II. If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after written notice is sent, the secretary of state may revoke the foreign limited liability company's registration by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and send a copy to the foreign limited liability company.

Amend RSA 304-C:81, I(b)-(g) as inserted by section 1 of the bill by replacing them with the following:

(b) Upon the receipt for filing of a statement under RSA 304-C:5, II, a fee in the amount of $15; upon the receipt for filing of a statement under RSA 304-C:5, IV, a fee in the amount of $15.

(c) Upon the receipt for filing of a certificate of formation under RSA 304-C:12, a certificate of amendment under RSA 304-C:13, a certificate of merger under RSA 304-C:21 or a restated certificate of formation under RSA 304-C:17, a fee in the amount of $35, and upon the receipt for filing of a certificate of cancellation of a domestic limited liability company under RSA 304-C:59, a fee in the amount of $35.

(d) Upon receipt for filing of an annual report under RSA 304-C:80, a fee in the amount of $100; for failure or refusal to file an annual report or pay the filing fee by April 15 of any year an additional late filing fee in the amount of $50; and upon receipt for filing of an application for reinstatement pursuant to RSA 304-C:54, a fee of $75.

(e) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of $1 per page and $5 for the certificate.

(f) Upon the receipt for filing of an application for registration as a foreign limited liability company under RSA 304-C:64 or a certificate of cancellation under RSA 304-C:68, a fee in the amount of $200, and upon receipt for filing of an amendment to an application under RSA 304-C:67, a fee in the amount of $15.

(g) Upon the receipt for filing of a statement under RSA 304-C:66, III, a fee in the amount of $15, upon the receipt for filing of a statement under RSA 304-C:66, IV, a fee in the amount of $15, and upon the receipt for filing of a statement under RSA 304-C:66, V, a fee in the amount of $2.50.

Amend 304-C:82-304-C:84 as inserted by section 1 of the bill by replacing them with the following:

304-C:82 Administration.

I. The secretary of state shall collect all fees required under this chapter and shall pay them to the state treasurer to be deposited in the general fund as unrestricted revenue, except as provided in paragraph II.

II. The state treasurer shall pay the expenses of administering this chapter out of any money in the treasury not otherwise appropriated until the fees collected pursuant to this chapter have been received by him. Thereafter he shall pay the expenses of administering this chapter out of the fees collected under this chapter and shall reimburse the treasury for previous expenses paid by him. The governor is authorized to draw his warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

304-C:83 Rulemaking. The secretary of state may adopt rules, under RSA 541-A, necessary to implement the provisions of this chapter.

304-C:84 Severability. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

304-C:85 Reserved Power of State of New Hampshire to Alter or Repeal Chapter. All provisions of this chapter may be altered from time to time or repealed, and all rights of members and managers are subject to this reservation.

Amend the bill by inserting after section 11 the following and renumbering the original sections 12 and 13 to read as 13 and 14, respectively:

12 Adding Limited Liability Companies. Amend the introductory paragraph of RSA 421-B:13, I-a and I-a(a) to read as follows:

I-a. Before the secretary of state may accept articles of incorporation for a new corporation under RSA 293-A, an application for a certificate of authority under RSA 293-A, a certificate of limited partnership for a new limited partnership under RSA 304-B, ***a certificate of formation for a new limited liability company or an application for regulation as a foreign limited liability company under RSA 304-C,*** or an application for registration of a foreign partnership under RSA 305-A, the following requirements shall be met:

(a) Along with a $50 filing fee, a statement shall be filed with the secretary of state that the capital stock of the corporation or the interests of the limited partnership ***or limited liability company*** have been registered, or when offered will be registered, under this chapter or are exempted, or when offered will be exempted, under this chapter, or are or will be offered in a transaction exempted from registration under this chapter; and, in the case of a New Hampshire corporation [or], limited partnership, ***or limited liability company,*** that the articles of incorporation or certificate of limited partnership state whether the capital stock or interests in the limited partnership will be sold or offered for sale within the meaning of this chapter.

SENATOR COLANTUONO: This bill is another major initiative of the legislature this year. Again, as Senator Russman has said with the emissions bill, the House did work on it. It sets up a new form of business entity called a 'limited liability company' or a 'professional limited liability company'. It is a concept that is sweeping the nation; about 1/3 of the states already have them, and within a couple of years another 1/3 will have them. I am sure that by the end of the century all of the other states will have them. Basically it allows a flexible form of business which gives you the legal protection of a corporation with limited liability but the tax advantages of a partnership or subchapter S corporation. It is a lengthy bill but it does exactly what the analysis says. The House worked on it; and the House committee went out and even looked for people who might have objections, everything was worked out in the House. The committee hearing had all witnesses speaking in favor of it. The amendments are some technical changes requested by the securities Division of the Secretary of State's Office. With the amendment the committee urges ought to pass.

Amendment adopted.

Ordered to third reading.

HB 164, an act relative to Workers' Compensation disability payments, lump sum payments, and safety inspections, and establishing an insurance fraud investigation unit. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2863B

Amendment to HB 164

Amend the title of the bill by replacing it with the following:

AN ACT

relative to workers' compensation lump sum payments, safety reviews, establishing an insurance fraud investigation unit, and studying workers' compensation disability payments.

Amend the bill by replacing all after the enacting clause with the following:

1 Lump Sum Payments. RSA 281-A:37 is repealed and reenacted to read as follows:

281-A:37 Lump Sum Payments.

I. Where there has been a determination of compensability by the employer, the employer's insurance carrier, the commissioner, the commissioner's designated representative or the board, and where the best interests of all concerned will be served, lump sum agreements may be approved by the commissioner. Nothing in this section shall prohibit the employer or the employer's insurance carrier from making a determination of compensability at any time.

II. In no event shall the medical provisions of this chapter be lump summed. The costs of vocational rehabilitation services as provided in RSA 281-A:25 may be lump summed provided the lump sum agreement specifically sets forth the portion of the lump sum amount attributable to vocational rehabilitation services. Such sum shall be held in escrow by the employer or insurance carrier and shall be paid to the provider of the vocational rehabilitation services for services incurred by the claimant. Any lump sum agreement which proposes to include the costs of vocational rehabilitation service shall also specify the nature of the vocational rehabilitation services to be provided to the claimant and shall require the claimant to commence such vocational rehabilitation services within 6 months of the approval of the agreement. The employer and the insurance carrier shall not be liable for vocational rehabilitation services incurred if the claimant fails to commence use of vocational rehabilitation services within 6 months after approval of the lump sum agreement, unless the period is extended by the commissioner for good cause.

III. No lump sum agreement shall be approved under this section except after a hearing before the commissioner or the commissioner's designated representative.

IV. Any lump sum payment which does not comply with this section shall not be included in data filed with the insurance department for ratemaking purposes nor shall it affect the employer's experience modification factor.

2 New Section; Program Established for Assisting Injured Employees. Amend RSA 281-A by inserting after section 42-b the following new section:

281-A:42-c Program Established for Assisting Unrepresented Injured Employees. The commissioner shall establish a program for assisting unrepresented injured employees in understanding, asserting, and protecting their rights under this chapter. Employee assistance personnel shall meet with or otherwise exchange information with injured employees, investigate injured employees' claims or potential claims, and communicate with employers, insurance carriers, group funded self-insurers and health care providers on behalf of injured employees, with the objective of resolving claims or potential claims promptly and amicably. However, assistance provided under this section shall not include representing claimants in hearings.

3 Hearings and Awards. Amend RSA 281-A:43, I(a) to read as follows:

I.(a) In a controversy as to the responsibility of an employer or the employer's insurance carrier for the payment of compensation and other benefits under this chapter, any party at interest may petition the commissioner in writing for a hearing and award. The petition shall be sent to the commissioner at the department's offices in Concord and shall set forth the reasons for requesting the hearing and the questions in dispute which the applicant expects to be resolved. The commissioner or the commissioner's authorized representative shall schedule a hearing, either in Concord or at a location nearest the employee as determined by the com-

missioner, by fixing its time and place and giving notice at least 14 days prior to the date for which it is scheduled. The hearing date shall be set for a time not to exceed 6 weeks from the date the petition was received. In those instances where an expedited hearing is requested, the petition for hearing shall set forth the facts in sufficient detail to support the request for an expedited hearing. The commissioner, or his authorized agent shall, in his discretion, determine whether the need exists for an expedited hearing. Any requests for an expedited hearing shall be periodically reviewed by the commissioner to determine whether such requests are given proper attention. The commissioner shall also identify any over-utilization by the requesting parties and responses given to such requests by the commissioner. An annual report of the expedited requests, responses, the number of continuances, the reasons for such continuances, the number of requests for hearing, and the time within which the hearings were held shall be made annually to the advisory council established in RSA 281-A:62. The notice shall be given in hand or by certified mail, return receipt requested. Continuances of any hearing are discouraged; however, should a continuance be necessary, the parties requesting such continuance shall file with the department a written petition for such continuance at least 7 days prior to the hearing. Failure to file such a petition shall bar any right to a continuance. Thereafter, a continuance may only be granted upon the commissioner's finding that a compelling need exists so as to require a continuance. At such hearing, [full consideration shall be given to all evidence presented, and] it shall be incumbent upon all parties to present all available evidence ***and the person conducting the hearing shall give full consideration to all evidence presented. In addition, the person conducting the hearing shall freely and comprehensively examine all witnesses to determine the merits of the matter. Also, the person conducting the hearing may recess the hearing to a date certain and direct the parties, or either of them, to provide such further information that may be necessary to decide the matter.*** No later than 30 days after the hearing, the commissioner or the commissioner's authorized representative shall render a decision and shall forthwith notify the parties of it. When appropriate, the commissioner, or his authorized representative, may render a decision at the hearing. Unless excused for good cause shown, failure of any or all parties at interest to appear at a duly scheduled hearing or to petition for a continuance shall bar such parties from any further action concerning an adverse decision, a decision by default, or a dismissal of a petition for hearing and award.

4 New Subparagraph; Notice to Employer Required. Amend RSA 281-A:43, I, by inserting after subparagraph (c) the following new subparagraph:

(d) Within 7 days of receipt of a notice of hearing under subparagraph I(a) or I(b), the insurance carrier or group-funded self insurance plan shall mail a copy of such notice to the affected employer. The commissioner may assess a civil penalty of up to $2,500 on any insurance carrier or group-funded self insurance plan which fails, without sufficient cause as determined by the commissioner, to comply with the provisions of this subparagraph. All funds collected under this subparagraph shall be paid over to the state treasurer for deposit into the general fund.

5 New Sections; Safety Reviews; Safety Enhancement Program. Amend RSA 281-A by inserting after section 65 the following new sections:

281-A:66 Safety Reviews.

I. Upon payment of a second claim for indemnity benefits, resulting from injuries incurred at any single work premises during any one policy year, the insurer making such payments shall conduct an on-site review at the specific location where the injuries occurred within 60 days of such payment. Within 30 days of the review, such insurer shall submit a written report of such review to the employer and the labor commissioner including in the report any significant findings relative to the safety of working conditions at the premises and any recommendations designed to improve such conditions. However, no insurer shall be required to make more than one such review within any 365-day period. The employer shall make a copy of the report available to employees upon request.

II. Each recommendation contained in the written report required under paragraph I shall, unless otherwise ordered by the commissioner, be implemented by the employer within 30 days of its submission. Failure to implement any such recommendation shall result, upon determination by the commissioner, in a safety enhancement surcharge of up to 10 percent of such employer's annual workers' compensation premium as determined by the commissioner.

III. All funds collected under paragraph II shall be paid over to the treasurer for deposit in the administration fund established in RSA 281-A:59.

IV. The commissioner may assess a civil penalty of up to $2,500 on any insurance carrier who fails, without sufficient cause as determined by the commissioner, to comply with the provisions of paragraph I. Moneys collected under this paragraph shall be paid over to the state treasurer for deposit in the general fund.

V. The obligations imposed in paragraph I shall not be construed to provide a basis for any liability for damages on the part of any insurer or any agent, servant or employee thereof, arising out of alleged performance or non-performance of such obligations.

281-A:67 Safety Enhancement Program.

I. There is hereby established a safety enhancement program to be administered by the commissioner. Such program shall include regional training and safety seminars open to all employers.

II. The annual cost associated with operating the safety enhancement program shall be established in the operating budget of the workers' compensation division of the department of labor and shall be supported from the administration fund established under RSA 281-A:59.

III. The commissioner may engage independent consultants and may make grants to labor unions, business associations and safety organizations to assist in the conduct of the program described in paragraph I within the limits of the appropriation for the program.

6 New Subdivision; Fraud Investigation Unit Established. Amend RSA 417 by inserting after section 22 the following new subdivision:

Insurance Fraud Investigation Unit

417:23 Insurance Fraud Investigation Unit Established. There is established in the department of insurance the insurance fraud investigation unit. The unit shall assist the commissioner in administratively investigating allegations of insurance fraud and in developing and implementing programs to prevent insurance fraud and abuse. The unit shall promptly notify the attorney general of any insurance application, claim, or activity which involves criminal conduct. When required by the commissioner and the attorney general, the unit shall cooperate with the attorney general in the investigation and prosecution of criminal violations.

417:24 Staff. The commissioner shall appoint 3 full-time, classified personnel who shall be qualified by training and experience to perform the duties of their positions.

417:25 Attorney General. When requested by the commissioner, the attorney general may assign an assistant attorney general to assist the unit in the performance of its duties.

7 Effective Date of Medical Fee Schedule Changed. Amend 1990, 254:48, I to read as follows:

I. RSA 281-A:24, I as amended by section 15 of this act shall take effect [July 1, 1993] ***January 1, 1995.***

8 Applicability of Certain Sections Changed. Amend 1990, 254:47, I, to read as follows:

I. RSA 281-A:24, I as amended by section 15 of this act shall apply to all medical and rehabilitative care administered on or after [July 1, 1993] ***January 1, 1995.***

9 Average Weekly Wages. The advisory council established in RSA 281-A:62 shall study the issue of changing the cap on average weekly wages for temporary total disability and permanent total disability payments. The council shall submit its report together with its findings and recommendations to the governor, speaker of the house, and the president of the senate no later than November 1, 1993.

10 Effective Date. This act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill:

(1) Clarifies the lump sum payment procedure.

(2) Requires the labor commissioner to establish a program to assist unrepresented injured employees.

(3) Adds a safety review procedure for certain work sites and establishes a safety enhancement program.

(4) Establishes an insurance fraud investigation unit administered by the insurance commissioner with the assistance of the attorney general.

(5) Requires the workers' compensation advisory council to study the issue of changing the cap on average weekly wages for temporary total disability and permanent total disability payments.

SENATOR HOLLINGWORTH: The committee on Insurance would like to ask ought to pass with amendment on HB 164. This bill like the one that we heard the other day, HB 606, received a great deal of testimony and a great deal of response from all of the business people in the state. As the Governor said before us that he believes that nothing was more important to jobs and economic development but to work on Worker's Comp. We believe that this amendment that we are bringing before you is a hard fought amendment. Not everyone got everything that they wanted, once again, but we feel that it will do many of the things to help to protect our businesses of the state. The bill clarifies a lump sum payment procedure and requires approval by the commissioner. The lump sum payment not complying with this section will not be included with the date files by the Insurance Department. The bill also requires the Labor Commissioner to establish a program to assist indigent employees and this program will be a resolution dispute coordinator. HB 164 also adds a safety review procedure for work places and particularly in the location that the injury happened. All of the testimony that we heard . . . that there were perhaps other ways to go and that they felt that by looking at the gross salary might be the avenue. Since we were so pressed for time we didn't feel that we were able to establish that. But we promise that that will be an area that will be before us again, perhaps next session. I would ask that you support this legislation and pass it with amendment.

SENATOR BARNES: Senator Hollingworth, actually I have a couple of questions. Talking in here about safety inspection procedure for certain work sites. What are those certain work sites, is that spelled out here in the bill?

SENATOR HOLLINGWORTH: Yes it is. What the original bill had is that if you had one injury that had a time loss, where you had loss of time, that the insurance companies would have to go in and they would have to inspect the whole facility and that didn't make much sense. Because as you know, if somebody has an accident in the front of your place, it may not affect the back of your establishment at all. We felt that that certainly was what the testimony overwhelmingly stated, is that they didn't feel that that was fair to have the whole place go under review. Actually it is a review, it is not a safety inspection, it has been changed to a review. The insurance companies go in and review the problem and then report back with the problem that they find. So clearly the intent is to look at the one specific area where the injury occured and to look at that. One of the big things that we heard over and over again is that most of the companies in the state of New Hampshire had been years since they had a safety review.

SENATOR BARNES: I think that is a great idea. My second question is that I see no money attached to this. I see fiscal impact, nothing.

SENATOR HOLLINGWORTH: There is one coordinator that is being added in the Insurance Department and it is not . . . this is from the Labor Commission and it just came in to us today. There is about $40,000 in 1994 and 1995, but that will come out of the Labor Department Fund, non general fund.

SENATOR BARNES: Well going along with the same question, I don't understand how we are going to set up a fraud investigation unit without paying somebody to do that. I would be happy to volunteer because there is an awful lot of fraud out there.

SENATOR HOLLINGWORTH: We already have the money appropriated in the budget. Those positions have already been appropriated in the budget.

SENATOR BARNES: The money has already been appropriated before we passed the bill?

SENATOR HOLLINGWORTH: Well, it was appropriated by the House and it has been established in the Senate's position.

SENATOR BARNES: I don't understand, but you seem to know what you are talking about.

SENATOR LAMIRANDE: Senator Hollingworth, my question would be on the effective date of the medical piece schedule change. It is amended to take effect as of January 1, 1995. And I would refer to average hospital care charges that were done between 1985 and 1990. The cost per day has gone from $415.88 to $658.99. The proposal delays for the third time the effective date for implementation of the fees schedule, originally authorized in 1990 while there is no immediate impact the access of a fee schedule may limit the ability of a managed care problem to deliver ongoing savings, could you address that?

SENATOR HOLLINGWORTH: I would be glad to, Senator Lamirande. We did discuss this several times in the committee and there was suggested at one point early on that maybe we should change that date. But we think that it is best to wait until we get the pilot program report which is due in and we will be addressing that next year.

SENATOR LAMIRANDE: Would you believe that I think that your committee has done an excellent job and coming about with a compromise in this bill that is favorable to all?

SENATOR HOLLINGWORTH: Thank you, Senator.

SENATOR COHEN: Senator Hollingworth, an injured employee under the amendment will have access to representation from a lawyer?

SENATOR HOLLINGWORTH: Absolutely.

SENATOR COHEN: Thank you.

SENATOR W. KING: I just wanted to say that of all of the bills other than term limits, this bill was fraught with the most controversy and it resulted with the most calls and letters from people all over the state of New Hampshire. I want to commend Senator Hollingworth and Senator Delahunty and all of the members of the Insurance committee because the Governor said that these were two of the most important bills in his opinion in economic development and you have done an extraordinary job of bringing people to consensus so that we can move forward on this very important issue.

Amendment adopted.

Ordered to third reading.

Recess.

Out of recess.

HB 167, an act clarifying circumstances under which a person is justified in using deadly force. Judiciary committee. Re-refer to committee. Senator Podles for the committee.

SENATOR PODLES: HB 167 addresses the problem of when a person is justified in using deadly force against another. The bill is meant to address situations when people are living at some dwelling but are not married or related by blood such as roommates or tenants. There is a lot of work to be done with this and we have decided to re-refer the bill and study it for another year.

Committee report of re-referred is adopted.

HB 437-FN, an act establishing a pilot program in one county designated by the court requiring parents involved with child custody or support issues to participate in certain seminars and making an appropriation therefor. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

2870B

Amendment to HB 437-FN

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a program requiring parents involved with child custody or support issues to participate in certain seminars and making an appropriation therefor.

1 New Chapter; Child Custody Seminar Required. Amend RSA 458 by inserting after chapter 458-C the following new chapter:

CHAPTER 458-D

SEMINAR FOR PARENTS INVOLVED WITH CHILD CUSTODY AND SUPPORT ISSUES

458-D:1 Purpose. The purpose of this act is to establish a program which would provide a 4-hour mandatory session for married or unmarried parents of minor children who are involved in custody and other issues which involve the children so that the adverse impact on the children of the litigation process and family's separation will be minimized.

458-D:2 Seminar Required; Court Referral. In the event of any action before the superior court where the parties are involved with child custody and support issues, and upon the establishment of the program described in this act, the clerk of the superior court shall, no later than the defendant's or respondent's filing of an appearance, require the parties to attend a 4-hour information session. This session shall be a seminar on how to help the children deal with the issues surrounding divorce, separation, and custody.

458-D:3 Seminar.

I. The seminar shall consist of the following:

(a) The seminar shall be conducted by a certified family therapist or other persons certified by the superior court, to inform the parents of the best way to address problems which the children face as the result of the divorce or separation. Presenters shall be a male and a female.

(b) Up to 1/2 hour of the session may be a segment on divorce options such as arbitration, mediation, and litigation.

II. The session shall be tailored to those issues concerning the children which may be of particular concern during the divorce or separation process including, but not limited to:

(a) Understanding the process of divorce or separation: interaction between parent and child, areas of adjustment, and areas of concern.

(b) Understanding how children react to the divorce or separation, how to spot problems, what to tell them about divorce or separation, how to keep communication open, and answering questions and concerns they may have about the process.

(c) How parents can help their children during the divorce or separation: specific strategies, ideas, tools, and resources for assistance.

(d) How parents can help children after the divorce or separation: new family structures, and how to deal with different sets of rules.

(e) Making clear that the general goal of cooperation between parents may sometimes be inappropriate, particularly in cases of domestic violence.

458-D:4 Seminar Schedule. The court shall encourage the presenters to schedule courses so that the seminar is available twice monthly in each county unless the county's population warrants otherwise. One parent need not attend the same seminar as the other parent. In the case of domestic violence, parents shall attend separate sessions. The seminar shall be completed within 45 days of service of the original complaint upon the original defendant.

458-D:5 Disciplinary Action. Upon a party's failure to complete the seminar pursuant to this act, the assigned judge may take appropriate action including, but not limited to, actions for contempt.

458-D:6 Attendance.

I. An alphabetical list of all parties eligible for the seminar shall be provided to the presenters prior to each seminar. The list may be utilized by the presenters and the court. As parties report to the seminar selected by them, they will provide the presenters identification, and they will be recorded as present.

II. Each person completing the seminar will be given a certificate of attendance to present to the judge at the time of that person's court appearance.

458-D:7 Costs.

I. Persons attending the seminar shall pay a seminar fee to the presenter. Fees charged by the presenter shall be fair and reasonable as directed by the chief justice of the superior court.

II. Presenters shall accept recipients of need based assistance programs at reduced or no cost and, upon request of the court, shall produce evidence of having done so.

III. On the commencement of any custody or support proceeding for which a fee is required, including libels for divorce with minor children, the court shall charge and collect an additional fee of $2 from the petitioner. These fees shall be in addition to any other fee required by law. These fees shall be deposited into the general fund.

458-D:8 Waiver. In order to be exempted from attending a seminar, parties may fill out an exception affidavit in which they would indicate that they meet one of the exceptions below. The affidavit may be obtained from the clerk of court and may be submitted at any time. Attendance at the seminar shall be waived under the following circumstances:

I. A party is incarcerated.

II. A party has previously attended the seminar.

III. The office of child support enforcement services has brought an action to enforce or modify an existing order.

IV. The court finds good cause to grant a waiver on any basis it deems appropriate, including, but not limited to, domestic violence, transportation or child care. Time extensions may be granted.

458-D:9 Rulemaking.

I. The chief justice of the superior court, subject to approval by the supreme court, shall designate the counties for the pilot programs and may establish such rules and orders of practice as are appropriate to effectuate this act and administer this program including, but not limited to:

(a) Beginning the program statewide on April 1, 1995, after pilot sessions have been conducted in 2 or more counties beginning January 1, 1994, to test operation, curriculum, and format. At least one of the pilot programs shall be conducted in a rural county, and one of the pilot programs shall be conducted in an urban county.

(b) Certifying public or nonprofit providers to lead the seminar.

(c) The form and content of presentation security.

(d) Any additional factors deemed necessary.

II. The chief justice shall utilize such in-state services as the U.N.H. Cooperative Extension Service, child and family services, and other agencies or individuals necessary to effectuate the program.

458-D:10 Report. The chief justice shall submit a report on or before January 15, 1995, detailing his findings and any recommendations for changing or repealing this act, to the speaker of the house, the senate president, and the governor.

2 Appropriation. The sum of $48,000 for the biennium ending June 30, 1995, is hereby appropriated to the superior court for the purpose of administering the seminars established in section 1 of this act. The funds in this appropriation shall not be transferred or expended for any other purposes. The governor is authorized to draw his warrant for said sum out of any money not otherwise appropriated.

3 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.
II. The remainder of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill establishes a seminar program for parents involved with child custody or support issues beginning April 1, 1995. A pilot program shall be conducted from January 1, 1994, to April 1, 1995. It also requires those couples to attend the seminar unless they meet one of the exceptions listed.

An appropriation is made for the biennium for program administration.

SENATOR HOLLINGWORTH: HB 437 would establish a pilot program requiring parents going through a divorce to attend parenting seminars. This pilot is fashioned after programs in Georgia and other states where people faced with the stress of divorce are given information on how best to deal with their children during these most difficult times. When two people are going through divorce, the children's feelings and needs are often forgotten or ignored, because the parents are so wrapped up in their own problems and difficulties. These seminars are run by nonprofit organizations and are geared specifically to helping parents recognize and address the problems and conflicts that children are faced with. They are educational in their presentation. I heard personally from many people throughout my district who were in strong support of this legislation. I originally was a little bit apprehensive, but I have to say that I looked into all of the other studies that were being done in the other states that had been working on this and I feel strongly that this is the appropriate legislation. I would ask for your support of ought to pass with amendment.

SUBSTITUTE MOTION

Senator Podles moved to substitute re-refer for ought to pass with amendment.

SENATOR PODLES: First of all, this bill mandates that people going through a divorce attend educational seminars. It is supposed to help the parents to understand their children, but there is a policy issue here in this bill, should the court obligate parties to attend a court administered counseling session? The persons required to attend must also pay for the counseling service that they are subject to and they could be subject to contempt if they don't do that. The Superior Court subject to approval by the Supreme Court would choose which counties would be the participants in this pilot program. The bill requires the Chief Justice to submit a report detailing findings and recommendations. If this program is such a good idea, then why not ask the participants what they think about the program, why should it be the Chief Justice of the Supreme Court? The cost of the seminar averages about $30 per person. The bill states, and this will include the indigents, but the bill states that indigency is not a reason for a waiver, but does not say who picks up that cost for the seminars and this presents a problem. The timing of the waiver also is not spelled out and some parts are vague. Would a person have to get an attorney to get a waiver? The bill originally asked for a $6 fee to be assessed to every person filing for a divorce in addition to the cost of a divorce to administer the program, but it lowers the assessment to $2. That $2 fee seems to fit the duck definition of a tax. If it looks like a tax and goes into the general revenue stream like a tax, it is a tax after all,

it is an assessment. The bill also requires clerical support and staffing which the court does not currently have and would not have to be appropriated and hired. This bill in addition to two presenters requires clerical, administrative and operational head count. That means a lot of overhead dollars and the fiscal note will give you a pretty good idea of this. It has also been suggested that the issue of marital masters will be studied by the Judicial council and they could very well include HB 437 as sort of a study thing. I would recommend that this bill be re-referred. It is very expensive and there are many provisions in the bill that are very vague. I think that just re-referring the bill and studying it for one year, we could come out with a better bill. The concept is very good but, there are many problems with the bill. I urge re-referral.

SENATOR HOLLINGWORTH: The Judiciary committee motion was ought to pass with amendment. Eleanor says that this is a mandate and I would like to say that I do not believe that this is a mandate. I think that it is a requirement. It is a requirement of a couple to go through an educational process so that they can do what is in the best interest of their children. If you look at the bill it clearly states, on page four, there is a waiver and it gives the conditions where there can be a waiver and that a court for a good cause shown can waiver on any basis that it deems appropriate, including domestic violence or indigency. There also can be a case where somebody could clearly say, "look, I have gone through counseling and I don't need this, and I don't think that it is necessary". Clearly the cost that we have in children that are disturbed and the cost that the state faces because of the problems that young children who when their parents are so wrapped up in their own problems that they forget the needs of their children, so this is a possibility of requiring parents. It is a requirement not a mandate. The money is being appropriated by a $2 fee on the people filing for divorce. We do think that the court if they would try, would be able to enact this. We hope that you will support this. The appropriation on the last page is incorrect and I hope that you will support this bill.

SENATOR COLANTUONO: Senator Podles, recalling the testimony from the committee hearing, could you tell our Senate colleagues how many times this bill was rewritten in the House before it came over to the Senate?

SENATOR PODLES: I think that it went to almost every committee in the House and each time it went to a committee it was rewritten. In fact, when we had a hearing, I also had an additional day, so I put it on twice for a hearing and twice they came in with different figures and different provisions. In the beginning, Senator, it was $70,000 that it would cost the courts to put this into operation and then it was reduced to $40,000 and we still don't know what the cost of this program would be. The court does not want it, they don't have the money to do it, and there isn't enough. They don't have the staff, additional staff would be required and this is a problem. I would ask that this bill be re-referred.

SENATOR BALDIZAR: I rise to speak against the motion of re-refer. I would like to point out that this had strong support in the Judiciary committee with all of the hearings and all of the testimony that we took and there was support from the court; in fact, several judges worked on this bill with the marital masters and the marital mediation people. There was some talk about the fee and the fee can be waived for people who find themselves in a position where they may not be able to come up with

the money themselves. There is a provision for the fee to be waived. This is a good service that we can provide to people and to families and to children. We talk about families and we talk about children, and this is an instance where I think that the counseling would benefit everybody going through the trauma of a divorce. This had such strong support statewide and the courts did support it. I can't think of opposition that came up in the hearing against it. There was strong support for it. I would urge you to defeat the motion of re-refer and to support the motion of ought to pass.

SENATOR RUSSMAN: I hadn't planned on speaking on this bill, but in the past 20 years I have done over 1,000 divorce cases, well over 1,000 divorce cases and I went through a very bitter one myself. I can tell you that if you want to try and keep kids from being screwed up that are going through these divorces, the parents have to understand that they can't be used as pawns. I sometimes say on some days if one more woman calls me and says, "do I have to let him see the kids if he doesn't pay me on time and stuff like that", I mean the kids, extraordinarily, get used in this process and they are the real losers in a divorce process. I mean, I can't tell you that if it is $25 or $30 for these people to go to two or three sessions, it is worth it. Some of them I really don't think that they understand, they melee the other parent to the children and they simply say, "well, get it from your father, he has the money", or, "I pay her child support let her buy the shoes for you", and this kind of stuff back and forth. I mean it is deplorable what the people of the United States, never mind just New Hampshire are doing to their kids in divorce. I think that if you want to strike a blow for children and keep them out of trouble and so on and so forth, this would certainly be a good step in the right direction. I would urge you to defeat the motion of re-refer and pass the committee report of ought to pass. It is a sensible bill and it is money well spent.

SENATOR COHEN: I also wanted to state that my recollection of the Judiciary committee hearing was that there was in fact, no opposition. There was no opposition to this bill at all. Coming out of the House the only changes were in the appropriation, we have lowered the appropriation. It just seems to me that we are in the business of working for New Hampshire's future and if the children are not New Hampshire's future, then I don't know what is. As Senator Russman stated, he has been in so many cases where the parents perhaps, unwillingly, do harm to the children. If we don't invest this money now, it is a very small appropriation, really. If we don't invest this money now, it is going to cost us much more in the future to try and to correct the problems that result from these children who are injured needlessly. I strongly support passage of this bill and urge a defeat of the motion to re-refer. Thank you.

Question is on the substitute motion to re-refer.

Motion of re-refer fails.

Question is on the committee amendment.

Amendment adopted.

Ordered to third reading.

HB 589-FN, an act requiring certain entities performing medical utilization review services to register with the insurance department. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Insurance would like to ask ought to pass on HB 589. This bill clarifies and strengthens the law enacted in 1992 which requires all out-of-state entities performing utilizing reviews to be licensed with the Insurance Department. Under HB 589 all of the in-state entities doing utilization review must register with the Insurance Department. It requires the Insurance Department when promulgating its administrative rules required under the current statute, the one passed in 1992 to use national standards for minimal standards for utilization review. The Insurance Department under HB 589 may adopt stricter standards if they believe that it is necessary to protect the citizens of New Hampshire. It requires that upon appeal that the individual who is performing utilization review be the same or of similar background as the provider being reviewed. HB 589 was unanimously passed by the Health and Human Services Elderly Affairs committee in the House and passed on the House in the consent calendar. In testimony where the Policy committee insurance providers stated that they were already doing what HB 589 requires; therefore, there would be no additional cost to insurance companies with complying with HB 589. A representative from the LBA's office also stated that they believe that the revised amended version will not have any fiscal impact on the state. I would ask ought to pass.

Adopted.

Ordered to third reading.

HB 455, an act increasing the funds available for prevention programs from not less than 5 percent to not less than 6 percent of the appropriation in each fiscal year after 1994, to the Division for Children and Youth Services. Public Institutions, Health & Human Services. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: This bill defines placement costs as money appropriated for adoption subsidies, foster homes, foster care and residential services, including group homes. In 1994 the amount appropriated is not less than five percent of placement cost and not less than six percent in 1995. Supporters, and there were many of them, there was only one person in opposition. Supporters testified prevention and diversion funds are money well spent. For example, New Hampshire pays about $200 annually per child for mediation versus the yearly cost at the Youth Development Center which is $44,000. The House included this funding in their version of the budget.

Adopted.

Ordered to third reading.

Senator Wheeler in opposition to HB 455.

HB 653, an act relative to the practice of optometry. Public Institutions, Health & Human Services. Ought to Pass with Amendment. Senator Podles for the committee.

2832B

Amendment to HB 653

Amend the bill by replacing all after the enacting clause with the following:

1 Board of Registration in Optometry Added. Amend RSA 318:9-a to read as follows:

318:9-a Payment for Inspectional Services. For the purpose of providing inspectional services under this chapter and RSA 318-B:25, the pharmacy board shall enter into separate agreements with the board of registration in medicine, the board of veterinary medicine, the board of podiatry, ***the board of registration in optometry,*** and the board of dental examiners, providing for each such board to compensate the pharmacy board for such inspectional services. The agreements shall provide for payment based upon a per capita charge for each person registered with each such board as a percentage of the total number of persons subject to inspection under this chapter and RSA 318-B:25. The fees received from agreements under this section shall be deposited with the treasurer as restricted revenue by the pharmacy board, and shall be included in the computation of fees to be established for the following fiscal year.

2 Optometrists Added. Amend RSA 318:42, II to read as follows:

II. Physicians, dentists, ***optometrists,*** and veterinarians from possessing, compounding, personally administering, or distributing prescription drugs to meet the immediate medical needs of their patients.

3 New Paragraph; Definition Added. Amend RSA 318-B:1 by inserting after paragraph XIX the following new paragraph:

XIX-a. "Optometrist" means a person authorized by law to practice optometry in this state pursuant to RSA 327;

4 Optometrists Added. Amend RSA 318-B:1-a, III to read as follows:

III. In addition to the provisions of RSA 541-A, the director shall give due notice of the time, place and purpose of all hearings required under this chapter to podiatrists, osteopaths, hospitals, pharmacists, physicians, dentists, veterinarians, ***optometrists***, laboratories, registered manufacturers, suppliers and to the general public by such means as he shall deem adequate. From and after the hearing date, the sale or dispensation (except by prescription) of a drug or chemical containing any quantity of such substance as is the subject matter of the hearing shall be suspended pending a determination as to whether such substance is to be designated as a controlled drug. Designation as a controlled drug shall result in the continued suspension of the sale or dispensation (except by prescription) of any drug or chemical containing any quantity of such substance until the effective date of the designation. The substance shall thereafter be a controlled drug subject to this chapter. If any substance is so designated, the director shall publish the designation in a newspaper of general circulation in the state once each week for 3 successive weeks.

5 Optometrists Added. Amend RSA 318-B:12, I to read as follows:

I. Practitioners, including physicians, podiatrists, dentists, veterinarians, ***optometrists,*** manufacturers, wholesalers, pharmacists, clinics, hospitals, and laboratories, shall keep separate records, so as not to breach the confidentiality of patient records, to show the receipt and disposition of all controlled drugs. Such records shall meet the requirements of the division of public health services and federal laws and regulations relative to the receipt, manufacture, inventory, distributions, sale, dispensing, loss, theft, and any other disposition of controlled drugs. The records shall indicate at least the name, dosage form, strength, and quantity of the controlled drug; the name and address of any person to whom the drug was administered, dispensed, sold or transferred and the date of any and all transactions involved with the controlled drug.

6 Optometrists Added. Amend RSA 318-B:12, III to read as follows:

III. Practitioners including physicians, podiatrists, dentists, veterinarians, ***optometrists,*** manufacturers, wholesalers, pharmacies, clinics,

hospitals, laboratories, and any other person required by federal law to conduct biennial controlled substance inventories, shall do so beginning May 1, 1991, and thereafter on May 1 of every odd numbered year.

7 Optometrist Added. Amend RSA 318-B:13, III to read as follows:

III. Whenever a practitioner other than a pharmacist, but including a physician, dentist, podiatrist, ***optometrist,*** or veterinarian, dispenses a controlled drug, he shall indicate on the container in which such drug is dispensed at least the name of the practitioner; the name and address of the patient, or, in the case of an animal, the name and address of the owner and the species of animal; the date dispensed; the name, strength, and quantity of drug dispensed; and the directions for administering the medication.

8 Definitions. RSA 327:1 is repealed and reenacted to read as follows:

327:1 Definitions. In this chapter:

I. "Board" means the board of registration in optometry.

II. "Dispensing pharmaceutical agents" means that a licensed optometrist authorized to use pharmaceutical agents may dispense a pharmaceutical agent to a patient if no charge is imposed for the pharmaceutical agent and the amount dispensed does not exceed a 24-hour supply, except that if the minimum available quantity for dispensing is greater than a 24-hour supply, the optometrist may dispense the minimum available quantity.

III. "Pharmaceutical agent" means the following pharmaceutical products:

(a) Non-legend, over the counter, agents.

(b) Mydriatic and cycloplegic agents which are topically applied.

(c) Miotic agents approved by the joint pharmaceutical formulary board and included in the formulary.

(d) Antibiotics, sulfonomides, and combinations thereof, which are topically applied or orally administered to treat or alleviate the effects of disease or abnormal conditions of the human eye, adnexa, and eyelids, excluding treatment of the lacrimal drainage system, the lacrimal gland, or structures posterior to the iris, approved by the joint pharmaceutical formulary board and included in the formulary.

(e) Antihistamines, decongestants and mast-cell stabilizers which are topically applied.

(f) Anesthetics and dyes which are topically applied.

(g) Ocular lubricants and hypertonic agents which are topically applied.

(h) Orally administered analgesic agents used for the purpose of alleviating pain caused by a disease or abnormal condition of the human eye or eyelid, excluding treatment of the lacrimal drainage system, the lacrimal gland, or structures posterior to the iris. This may include class III and IV controlled substances approved by the joint pharmaceutical formulary board and included in the formulary.

(i) Other pharmaceutical agents, any solely diagnostic agents, and diagnostic agents combined with pharmaceutical agents as defined in this paragraph and as approved by the joint pharmaceutical formulary board.

(j) Non-steroidal anti-inflammatory agents approved by the joint pharmaceutical formulary board and included in the formulary.

IV. "Practice of optometry" means the employment of any methods or means, other than surgery, for the:

(a) Diagnosis and treatment of any optical defect, deficiency, deformity, or disease of the human eye, adnexa and eyelids.

(b) Diagnosis and treatment of any visual or muscular anomaly of the visual system.

(c) Adaptation or prescribing of spectacle lenses, contact lenses, prisms or ocular exercises for the correction, relief or aid of the visual functions.

(d) Prescribing, administering or dispensing of pharmaceutical agents.

(e) The application or removal of Food and Drug Administration - approved medical devices as approved by the board and consistent with the practice of optometry as set forth in this chapter including, but not limited to, contact lenses and punctal plugs.

"Practice of optometry" shall not include and nothing in this chapter shall authorize or allow the treatment of glaucoma or other intraocular pressure elevation, or the prescribing, administering, or dispensing of corticosteroids in any form.

V. "Prescription of pharmaceutical agents" means a written or oral direction to dispense a pharmaceutical agent, including inscription, subscription, transcription, and renewal.

VI. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical means. Surgical procedures shall include the use of lasers for therapeutic and photorefractive purposes, ionizing radiation, therapeutic ultrasound, or medication administered by injection, provided that the removal of superficial foreign bodies from the eye, adnexa or eyelid shall not be considered a surgical procedure prohibited by this chapter. With respect to a foreign body, any part of which is situated within 3 millimeters of the visual axis, "superficial foreign body" means that which has not penetrated deeper than the corneal epithelium.

9 Requirements to Use Pharmaceutical Agents. RSA 327:6-a is repealed and reenacted to read as follows:

327:6-a Requirements; Authorization.

I. Only licensed optometrists who have successfully completed examinations on pharmacological substances and other treatments of diseases of the eye, adnexa and eyelids, who have met acceptable standards of education and professional competence as determined by the board, and who hold current certification in cardiopulmonary resuscitation (CPR), shall be authorized to use pharmaceutical agents in the practice of optometry.

II. An optometrist licensed to practice optometry prior to January 1, 1993, shall complete a post-graduate course of study approved by the board covering the subjects of ocular pharmacology and the treatment and management of eye diseases and shall pass an examination administered by the National Board of Examiners in Optometry or its successor and approved by the board. Every optometrist licensed to practice optometry after January 1, 1993, shall pass an examination administered by the National Board of Examiners in Optometry or its successor and approved by the board. To meet the requirements of this section, an approved course shall be given by an accredited school or college of optometry in the United States and shall consist of a minimum of 105 hours, of which a minimum of 25 hours shall be in direct clinical training. The board shall adopt rules, under RSA 541-A, to carry out the provisions of this section and to insure the safety of the public.

III. Notwithstanding any other provision of law, any licensed pharmacist is authorized to fill prescriptions issued by optometrists for pharmaceutical agents authorized under this chapter or included in the approved formulary.

IV. Nothing in this section shall be construed to permit an optometrist to administer any pharmaceutical product by intravenous injection; or to administer, prescribe or dispense any pharmaceutical product designated as a category I or II controlled substance defined by the United States Controlled Substances Act of 1970, as amended; or to administer, prescribe or dispense any pharmaceutical product except for the diagnosis or treatment of disease or conditions of the human eye, adnexa or eyelids.

V. Notwithstanding any other provision of law, an optometrist who is certified to use pharmaceutical agents in the practice of optometry shall be permitted to administer diphenhydramine, epinephrine or an equivalent medication to counter anaphylaxis or anaphylactic reaction.

10 Joint Pharmaceutical Board Revised. Amend RSA 327:6-b to read as follows:

327:6-b Joint Pharmaceutical Formulary Board.

I. The joint pharmaceutical formulary board shall consist of [7] ***the following*** members [as follows]: [2] ***3*** optometrists licensed [and qualified] ***under RSA 327, including RSA 327:6-a,*** to practice optometry in the state of New Hampshire [under RSA 327]***, one of whom teaches at a college of optometry, one of whom serves on the board of registration in optometry, and one who is authorized to use pharmaceutical agents;*** [2 physicians] ***one ophthalmologist*** licensed [and qualified] ***under RSA 329*** to practice [as ophthalmologists] in the state of New Hampshire; [one pharmacologist practicing in the state of New Hampshire; one pharmacist] ***one physician licensed under RSA 329 who specializes in internal medicine and who practices in the state of New Hampshire; and 2 pharmacists*** licensed ***under RSA 318*** and ***actively*** practicing in the state of New Hampshire***, one of whom shall be a member of the board of pharmacy***[; and one dentist licensed in the state of New Hampshire who shall be the public member of said board]. [Members of the initial board shall serve for staggered terms of 2, 3, and 4 years. Of the initial board, 2 shall serve for 2 years, 3 shall serve for 3 years and 2 shall serve for 4 years. All subsequent] Members [appointed] shall serve terms of 5 years and shall not be eligible for a second consecutive term. Recommendations for appointment shall be made to the governor [and shall be subject to confirmation by the executive council. The optometric, physician, and pharmacy members shall be recommended] by [their] ***the*** respective professional associations. [The dentist as public representative and the pharmacologist shall be nominated directly by the governor. The dentist shall serve as chairperson of the joint pharmaceutical formulary board.] All members shall be residents of the state of New Hampshire. Neither they nor their spouses shall have any material financial interest in the provision of eye care services other than that which is directly [connected] ***related*** to the practice of their professions. All members shall be nominated and confirmed by the governor and council.

II. The board shall meet not less than every 3 months to discuss matters pertinent to the therapeutic optometrists formulary. Matters to be brought before the board shall be filed in writing with the chairperson at least 30 days prior to the scheduled meeting. Any request on the agenda not acted upon or which has not received a final decision must be decided within 6 months or the request shall be deemed granted. Each of the licensing boards represented on the joint pharmaceutical formulary board may submit items to be assigned to the agenda for consideration.

III. Violations of this section shall be reported in writing to the ***board of pharmacy and to the*** board of registration in optometry, which shall investigate alleged violations and take disciplinary actions as appropriate under [the powers granted under] RSA 327:20. The joint pharmaceutical formulary board shall be apprised of all reported violations of this section and shall receive copies of all reports, findings, and disciplinary action taken. The use of any pharmaceutical [agent] ***agents by an optometrist not authorized under RSA 327:6-a or,*** other than those [approved for diagnostic purposes or for other than diagnostic purposes] ***agents described in RSA 327:1 or those approved by the formulary board*** shall be considered a violation of RSA 327:20.

11 New Sections; Continuing Education Courses Required For Pharmaceutical Certification. Amend RSA 327 by inserting after section 33 the following new sections:

327:33-a Continuing Education Courses Required For Pharmaceutical Certification. An optometrist certified to use pharmaceutical agents in the practice of optometry shall complete a minimum of 150 hours of continuing education every 3 years in order to maintain his pharmaceutical certification. At least 60 of these hours shall be in courses approved and supervised by the board. The remaining hours shall be in independent study activities authorized by the board. Each optometrist shall report continuing education hours to the board annually in accordance with rules adopted by the board for the implementation of this section. These continuing education courses and activities shall satisfy the requirements of RSA 327:33.

327:33-b Consumer Publication. The board of optometry shall develop a consumer publication that contains the information necessary to educate consumers regarding optical services and products, the services available from the optometrist authorized to use therapeutics to treat eye conditions, and the services available from other optometrists. The board shall supply reasonable quantities of this publication at no charge to all licensed practitioners.

12 Effective Date.

I. Section 10 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 1994.

SENATOR PODLES: Mr. President and members of the Senate, HB 653 as amended expands the scope of practice of optometry to include certain therapy. New Hampshire is following the lead of 35 other states in broadening the responsibilities of optometrists; however, I would like to note that we are taking a conservative approach. Under HB 653 optometrists are not permitted to treat glaucoma. The Senate version clarifies the intention of the House by specificly prohibiting glaucoma treatment. Optometrists are not allowed to use steroids as well. The bill also changes the makeup of the Joint Pharmacutical Formulary board and requires that they meet quarterly to determine which drugs optometrists are permitted to use. HB 653 increases the continuing education requirements for optometrists to reflect the expansion of scope and optometrists will be required to complete about 150 hours every three years in order to maintain their licenses. This bill represents a hard fought compromise which strikes a balance between the optometrist and the ophthalmologist while protecting the health and safety of the public. I want to mention here that it is an agreed bill. Public Institutions, Health and Human Services unanimously supported HB 653 as amended and urges you to do the same.

SENATOR BARNES: Senator Podles, what do these optometrists that are in practice now, how do they get up to speed so that they are able to take care of things, what is laid out for that?

SENATOR PODLES: Well they have to take as I have said, there is this board and this board is going to be dictating to them what they should do and what they should not do. In addition to that, they are going to have to take these continued education courses, 150 hours every three years. They are going to be closely watched by this board too, but it is an agreed bill. It isn't everything that they wanted, but it is an agreed bill.

SENATOR BARNES: This bill takes effect January 1, I assume?

SENATOR PODLES: 1994 because it gives them about six months to get going.

SENATOR BARNES: But the fellow that I might go to, he is going to have to go through something before he can do these additional things to me on January 2 when I go to the eye doctor on January 2?

SENATOR PODLES: He is going to have to do something?

SENATOR BARNES: Between now and January 2 when I have my appointment, is he going to have to do something to be able to take care of me?

SENATOR PODLES: No. Some of them are already qualified to do this.

SENATOR BARNES: Well what if the fellow that I go to isn't qualified?

SENATOR PODLES: Well then he has to take these courses and be certified.

SENATOR BARNES: Thank you.

SENATOR LAMIRANDE: Senator Podles, if in fact an optometrist is already licensed, say in another state, say Maine which is adjacent to us, and we do have optometrists that practice in New Hampshire, in Berlin as a matter of fact, would they have to be relicensed or would that . . .

SENATOR PODLES: I am not sure about the relicensing.

SENATOR J. KING: No they wouldn't have to.

Amendment adopted.

Ordered to third reading.

HB 435-FN, an act relative to an alternate state contribution for surface water treatment systems. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

2850B

Amendment to HB 435-FN

Amend RSA 486-A:2, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Altering, improving or adding to existing water treatment or water source, storage or transmission main facilities in order to meet the requirements of the surface water treatment rules.

Amend RSA 486-A:3, I as inserted by section 1 of the bill by replacing it with the following:

486-A:3 State Contribution.

I. Any public water system which is or was required, beginning in 1986, to achieve compliance with the surface water treatment rules of the EPA or the rules of the New Hampshire department of environmen-

tal services adopted to implement the Federal Safe Drinking Water Act amendments of 1986 shall be eligible for a state contribution. As its contribution, the state shall pay 20 percent of the annual amortization charges, meaning the principal and interest, on the eligible costs resulting from the construction of new wells or a filtration system to meet the requirements of the surface water treatment rules.

Amend paragraph II of section 4 of the bill by replacing it with the following:

II. The appropriation in paragraph I of this section shall be used to reimburse municipal public water systems for expenditures for projects eligible under the provisions of this act made between 1986 and 1993 to comply with the requirements of the surface water treatment rules adopted under the federal Safe Drinking Water Act amendments of 1986. These payments shall be made in a lump sum which shall include reimbursement for eligible costs, as determined by the department of environmental services in accordance with the provisions of this act, to the following systems and any other system which has made improvements eligible under this act:

(a) Ashland
(b) Campton
(c) Canaan
(d) Gorham
(e) Woodsville
(f) Laconia
(g) Newport
(h) Meredith
(i) Warner
(j) Manchester
(k) Newmarket

SENATOR RUSSMAN: Well as you know, many years ago the federal government passed the Safe Drinking Water Act. More than a dozen towns are still being forced to comply with the unfunded federal mandate to build filtration systems that sometimes cost millions of dollars more. The good and the bad of this bill is that it talks about the state contributing 20 percent of that cost. The amendment clears up some technical language and lists the effective system so that there is no confusion at the DES. Now that is on the positive side. In all honesty, I was not there at the hearing for this bill, but, the problem with this is that it sets a very broad . . . just so that you know both sides of the story . . . it sets a very broad and expensive policy for the state of New Hampshire. Because there are going to be hundreds and hundreds of thousands of dollars spent on this and if we do pass this . . . this is going to have to go to Finance to see what the financial aspects are of this because there are some real concerns there in terms of the budget and in terms of what this would do for the system. So on one hand, it is a great idea. But the practicality of this, of paying for this on a 20 percent kick in basis by the state of New Hampshire of money that we probably don't have, is another issue. So it is going to have to go to Finance and have some real scrutiny here later on.

Amendment adopted.

SENATOR COLANTUONO: Mr. President, is this subject to the deadline of tomorrow?

SENATOR HOUGH (In the Chair): Yes it is. It will come back this afternoon.

SENATOR BLAISDELL: It will have to come back today and that is the reason that I asked for it to come down to Finance. Senator Russman explained it well, but I want all of you to take a look at HB 435. Look at it and see what it does. I will take it down to Finance and then I will bring it back. But there is a lot of money involved in here and it is not in the budget right now and I want you to know this but it does affect some of your towns, so I want to make sure that you know that. Take a look at HB 435.

SENATOR DISNARD: He has raised questions through his statements. Senator Blaisdell, are you saying that the House passed 435 and didn't include any money in the budget?

SENATOR BLAISDELL: I can say that the House passed it. The answer to your question is no we have to appropriate that.

Referred to the Division on Finance (Rule #24).

HB 229-FN, an act relative to expenditures from the highway fund. Transportation committee. Inexpedient to legislate. Senator MacDonald for the committee.

SENATOR MACDONALD: The committee on Transportation voted this inexpedient to legislate because it also appears on HB 2 on page two. It was felt by the committee that it would be better handled there.

Committee report of inexpedient to legislate is adopted.

HB 505, an act relative to implied consent for blood alcohol content testing in certain motor vehicle fatalities. Transportation committee. Ought to Pass with Amendment. Senator MacDonald for the committee.

2857B

Amendment to HB 505

Amend the title of the bill by replacing it with the following:

AN ACT

relative to implied consent for blood alcohol content testing in certain motor vehicle fatalities and making technical corrections to certain provisions of the DWI and implied consent laws.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 5:

3 Rulemaking; Reference to Physical Tests Removed. Amend RSA 265:85, V(a) to read as follows:

(a) Methods and procedures for [physical testing and examination to determine whether a person is under the influence of intoxicating liquor or controlled drugs and for] the testing of blood, urine, and breath to determine [the controlled drug content of a person's blood or] alcohol concentration ***and controlled drug content of a person's blood;***

4 New Section; Administration of Physical Tests. Amend RSA 265 by inserting after section 85 the following new section:

265:85-a Administration of Physical Tests Added. No post-arrest physical test or examination authorized by RSA 265:84 shall be considered as evidence in any proceeding before any administrative officer or court unless such test or examination is performed by a law enforcement officer who has been trained in the administration of such physical tests and examinations by a law enforcement agency or in a training program approved by the police standards and training council.

AMENDED ANALYSIS

This bill clarifies the law regarding blood alcohol testing after a person has been arrested for a felony level offense involving driving.

This bill prohibits certain post-arrest physical tests or examinations to be introduced as evidence unless the test or examination was performed by a properly trained law enforcement officer.

The bill also makes a technical correction to a rulemaking section relative to DWI testing.

SENATOR MACDONALD: This bill was filed because of a court case. What it does is that it makes it very clear the right to refuse a blood test, whether you are a driver, passenger or a pedestrian, live or dead in an accident, a case where bodily injury does not exist. It makes it very clear under the law what happens. The amendment on this bill takes care of an error on HB 137 section 16 about rulemaking on physical testing.

Amendment adopted.

SENATOR LAMIRANDE: I just want to make a notation that I strongly support HB 505 because what it does is correct a technical error that was in the original HB 137 and that the amendment to HB 137 was not an error it was in fact correct.

Ordered to third reading.

HB 194-FN-LOCAL, an act relative to rabies control. Wildlife and Recreation Committee. Ought to Pass with Amendment. Senator Cohen for the committee.

2774B

Amendment to HB 194-FN-LOCAL

Amend RSA 436:105, I as inserted by section 2 of the bill by replacing it with the following:

I. Any dog displaying symptoms which indicate a likelihood that such dog is afflicted with rabies which has bitten a person and caused a puncture of the skin or which has caused a nonbite exposure shall be immediately euthanized and the head sent for examination to the public health laboratory, division of public health services. It shall be the responsibility of the owner for any expense for euthanizing the dog and for preparing the head for shipment to the public health laboratory. If the dog is a stray, the rabies control authority shall be responsible for the expense, and such expense shall be paid from fees collected under RSA 466:4 and 466:6.

Amend RSA 436:105-a, I as inserted by section 3 of the bill by replacing it with the following:

I. Any cat displaying symptoms which indicate a likelihood that such cat is afflicted with rabies which has bitten a person and caused a puncture of the skin or which has caused a nonbite exposure shall be immediately euthanized and the head sent for examination to the public health laboratory, division of public health services. It shall be the responsibility of the owner for any expense for euthanizing the cat and for preparing the head for shipment to the public health laboratory. If the owner of the cat is not known, the rabies control authority shall be responsible for the expense, and such expense shall be paid from fees collected under RSA 466:4 and 466:6.

SENATOR COHEN: I move the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 406, an act establishing a committee to study pet overpopulation. Wildlife and Recreation Committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 483-FN-LOCAL, an act relative to the licensing of dogs. Wildlife and Recreation Committee. Ought to Pass with Amendment. Senator Cohen for the committee.

2867B

Amendment to HB 483-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT

relative to licensing dogs, allowing dogs on certain premises for security reasons, and requiring that dogs and cats placed by shelters and pounds be spayed or neutered and relative to dogs in training to be working dogs.

Amend the bill by replacing all after the enacting clause with the following:

1 Reference Added; Dog Licenses. Amend RSA 466:1 to read as follows:

466:1 Procuring License; Tag. ***Unless the dog is licensed in accordance with RSA 466:4, II-a,*** every owner or keeper of a dog [3] ***4*** months old or over shall annually, on or before April 30, cause it to be [registered,] numbered, described and licensed for one year from the ensuing May 1, in the office of the clerk of the city or town wherein said dog is kept, and shall cause it to wear around its neck a collar to which shall be attached a metal tag with the following information thereon: the name of the city or town, year of issue of license and its [registered] ***license*** number. Said tag shall be furnished by the clerk at the expense of the city or town from the amount received from the dog license fees.

2 New Paragraph; Licensing Options Added. Amend RSA 466:4 by inserting after paragraph II the following new paragraph:

II-a.(a) Notwithstanding RSA 466:1 and paragraphs I and II of this section, any owner of a dog, over one year of age at the time of procuring a license, may upon proof of a new 3-year rabies inoculation, have such dog licensed for a 3-year period. The fee for a 3-year license for any unneutered male or unspayed female dog shall be $19. The fee for a neutered male or spayed female dog, with proper certification from the person who performed the operation, shall be $12.

(b) The 3-year dog license under subparagraph II-a(a) may be available at local option by the governing body at the office of the city or town clerk, participating veterinary clinics, local police and fire stations during regular hours and at rabies and licensing clinics. If offered at these locations, the sale of such license may be administered by the city or town clerks and shall use a form approved by the commissioner of agriculture.

(c) The commissioner of agriculture shall adopt rules under RSA 541-A relative to the administration of this paragraph.

3 New Paragraph; Distribution of Moneys. Amend RSA 466:9 by inserting after paragraph I the following new paragraph:

I-a. If the clerks of the city or town issue the license pursuant to RSA 466:4, II-a, the requirements of paragraph I of this section shall apply except that in addition to the payments required under paragraph I of

this section, $1.50 of each fee collected pursuant to RSA 466:4, II-a shall be submitted to the department of agriculture.

4 Exemption From Fee. Amend RSA 466:8 to read as follows:

466:8 Exemption From ***Fee.*** No fee shall be required for the registration and licensing of a dog which has served with the forces of the United States and has received an honorable discharge therefrom. No fee shall be required for the registration and licensing of a [guide] dog which is [used as a guide for a blind person, a hearing ear dog which is used by a deaf person, or a service dog which is used by a mobility impaired person] ***in training for use as or used as a guide dog, a hearing ear dog, or a service dog, as such dogs are identified in RSA 167-D:5.*** When a blind, a deaf or hearing impaired, or mobility impaired person is applying for a license, he shall present a proper identification card from a recognized guide dog, hearing ear dog, or service dog training agency or school.

5 Payment Added. Amend RSA 466:9, II to read as follows:

II. The $.50 ***and the $1.50, if appropriate,*** received by the department of agriculture for each license issued pursuant to paragraph I ***and RSA 466:4, II-a*** shall be credited to a special nonlapsing fund to be used exclusively for the operation of the veterinary diagnostic laboratory established under RSA 436:92, and are hereby continually appropriated for such purpose to be expended under the supervision of the commissioner of agriculture.

6 New Section; Dogs Allowed for Security Reasons. Amend RSA 313-A by inserting after section 23 the following new section:

313-A:24 Dogs Allowed for Security Reasons. Notwithstanding any law or rule to the contrary, any owner of a salon or barbershop licensed under this chapter may allow a dog on the premises for security reasons.

7 New Subdivision; Sale or Gift by Animal Shelter Facility of Dog or Cat Not Spayed or Neutered. Amend RSA 437 by inserting after section 22 the following new subdivision:

Sale or Gift by Animal Shelter Facility of Dog or Cat Not Spayed or Neutered

437:23 Spaying or Neutering Required.

I. No agent acting on behalf of an animal shelter facility, as defined in RSA 437:2, I shall give, release, sell, trade or otherwise transfer to a new owner, with or without a fee, any dog or cat that has not been spayed or neutered, unless the shelter enters into a written agreement with the adoptor or purchaser guaranteeing that the animal will be sterilized within 30 days, in the case of animals 9 months of age or older, or within 30 days of reaching 9 months of age for younger animals. The shelter may make appropriate arrangements for the spaying or neutering of such dog or cat by a licensed veterinarian. The shelter may, at its option, require the adoptor or purchaser to tender a spay/neuter deposit of not less than $10 nor more than $40 at the time of adoption or purchase. The shelter shall return the remainder of the deposit to the person who made it upon receipt of a written statement from a veterinarian that the dog or cat has been spayed or neutered.

II. Any dog or cat 6 months of age or older at the time of its transfer by the shelter shall be spayed or neutered within 30 days. Any dog or cat under 6 months of age at the time of its transfer by the shelter shall be spayed or neutered within 30 days of reaching 6 months of age. Upon the request of a licensed veterinarian stating that the life or health of the dog or cat may be jeopardized by spaying or neutering, the shelter shall waive the requirement that the animal be spayed or neutered.

437:24 Civil Penalty; Use of Moneys.

I. Any person or agency who fails to comply with RSA 437:23 shall be assessed a civil penalty not to exceed $250. In addition, if the person who adopted a cat or dog is the party in noncompliance, any spay/neuter deposit paid shall be forfeited and, upon demand by the shelter, the adopted cat or dog shall be returned to the shelter. In such a case, ownership of the adopted cat or dog shall revert to the shelter.

II. All civil penalties under paragraph I may be recovered by complaint before a district or municipal court in the town or county where the offense is committed and shall be remitted to the town clerk or city clerk of the municipality where the owner of the animal resides.

III. Any spay/neuter deposit which remains unclaimed 60 days after the adoption of a cat or dog 9 months of age or older at the time of its adoption or, in the case of a cat or dog less than 9 months of age at the time of its adoption, which remains unclaimed at the time the cat or dog becomes 10 months old, shall become the property of the animal shelter facility receiving the deposit. The unclaimed deposits shall be used by the animal shelter facility only for the following purposes:

(a) A public education program to prevent overpopulation of cats or dogs.

(b) A program to spay or neuter cats or dogs.

(c) A follow-up program to assure that animals transferred by the shelter are spayed or neutered except under RSA 437:25, I.

(d) Costs incurred under this subdivision.

IV. A shelter that collects deposits under the terms of RSA 437:23, I shall make available annually to the public a report listing the reasons and the numbers, including but not limited to age, health condition, and aggression, for admissions, euthanasia, number of spays and neuters, and placement of cats and dogs and a financial accounting of any funds received, accrued, and any expenditures made, as a result of RSA 437:23. Both the report and accounting shall be made available not later than June 1, in each calendar year, to any person upon written request and shall be published in a local newspaper having a paid circulation of at least 5,000 not later than June 1, in each calendar year.

437:25 Purebred Animal Rescue Organizations and Representatives.

I. An animal shelter, as defined by RSA 437:2, shall maintain a list of purebred animal rescue organizations or their representatives. A shelter shall contact the appropriate breed rescue organization or its representative upon admission of a purebred animal. Breed rescue organizations shall be exempt from the requirements of RSA 437:23 and RSA 437:24.

II. Upon transfer of an animal from a shelter to a purebred animal rescue organization or its representative, the purebred animal rescue organization shall reimburse the shelter for actual expenses incurred for food and veterinary care of the transferred animal.

437:26 Definition of a Purebred Animal and Purebred Animal Rescue Organization. For the purposes of this subdivision:

I. A "purebred animal" is an animal, such as a purebred dog, which when bred to its own kind or breed, will reproduce genotypically and phenotypically true and is an animal, such as a purebred dog, which belongs to a breed registered and recognized by a national registry body containing either multiple purebred animal breeds or a singular pure breed.

II. A "purebred animal rescue organization" is an organization which is dedicated to the welfare, maintenance and placement of specific breeds of animals, such as purebred dogs.

8 Effective Date.

I. Sections 1-3, 5 and 6 of this act shall take effect upon its passage.

II. Section 7 of this act shall take effect January 1, 1994.

III. Section 4 of this act shall take effect 60 days after its passage.

IV. The remainder of this act shall take effect upon its passage.

AMENDED ANALYSIS

This bill offers owners of dogs licensing options. Owners desiring to take advantage of the licensing options will be required to produce proof of a rabies inoculation good for a 3-year period.

The bill authorizes owners of salons or barbershops licensed under RSA 313-A to have a dog on the premises for security reasons.

This bill requires that all dogs and cats placed by animal shelter facilities be spayed or neutered. Under this bill, if the animal is not spayed or neutered at the time of placement, unless the shelter enters into a contract with the person adopting the animal guaranteeing that the animal will be sterilized. Any deposit will be returned to the person upon certification of spaying or neutering. The bill includes a civil penalty for violations of the law, which when collected will be used only for animal control purposes.

The bill also exempts dogs in training to be guide, hearing ear, or service dogs from licensing fees.

SENATOR COHEN: I defer to Senator Roberge.

SENATOR ROBERGE: Mr. President and members of the Senate, this bill starts off by allowing dogs to be registered every three years instead of every year. You can also now instead of registering at your clerk, you can do it at rabies clinics, participating veterinary clinics, local police, fire and it can continue to be the town clerk as well. It refers to the licensure of dogs that are in training to be hearing dogs or sight dogs and it exempts them. It requires the spaying and neutering of all animals released out of a shelter or pound. It sets up a deposit situation. It talks about dogs that are used as a guard dogs in barber shops. I think that is about all of the big points that it covers.

SENATOR BOURQUE: This is the "Shadow bill amendment" and I thought that we would bring it to the attention of the Senate today because Mr. Longval again was denied by the Board of Barber and Cosmetology to allow a dog to be in his shop for security reasons. I would like to thank the Senate for being in support of this because in the past year or 22 months or so things have changed in the neighborhood and it has been very helpful to him to allow the Senate to agree to have this security dog in his shop. I really appreciate the hard work that they have done. Thank you.

Amendment adopted.

Ordered to third reading.

HB 126-FN-A, an act requiring the commissioner of Transportation to establish an adopt-a-highway program. Capital Budget Committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: The Capital Budget committee did not make any changes to this bill which was originally heard in Transportation. The bill directs DOT to establish an adopt-a-highway program where local service clubs and businesses take care of the litter pick-up along a certain section of state highways in exchange for some positive publicity. The committee recommends ought to pass.

SENATOR W. KING: Mr. President, I rise in support of this bill because I think that it is the best testimony that the DOT does indeed have the ability to change its mind and learn. Last year this bill appeared with my name on it and they testified against it. I am glad to see them coming forward with it this time.

Adopted.

Ordered to third reading.

HB 184, an act establishing a study committee to oversee the design and planning of a new Plymouth district courthouse. Capital Budget Committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: This is an act establishing a study committee to oversee the design and planning of a new Plymouth district courthouse. We are not looking for a dollar contribution, it only sets up a study committee. It is in the Capital Budget. I believe $60,000 was appropriated for the design.

Adopted.

SENATOR BALDIZAR: I was in error when I gave the dollar amount, I said $60,000 and that was for Plaistow and Franklin. It is $100,000 for Plymouth and I just wanted to correct that so people would know that. Thank you.

Ordered to third reading.

HB 249-FN-A, an act relative to a lease-purchase agreement between the city of Franklin and the state to design and construct a new district courthouse; and extending lapse dates for certain capital appropriations. Capital Budget Committee. Inexpedient to Legislate. Senator Wheeler for the committee.

SENATOR WHEELER: The Capital Budget committee has also put the money for the design of the Franklin district courthouse in the Capital budget and we took out the lease purchase language. We had some concerns about that, but we are committed to the project. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 298-L, an act authorizing bonding by the town of North Hampton. Capital Budget Committee. Ought to Pass. Senator Bourque for the committee.

SENATOR BOURQUE: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 400, an act authorizing the Division of Water Resources to acquire the Oliverian Dam in Benton and transferring certain dam rights and easements to the Division of Water Resources. Capital Budget Committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 450-FN-A, an act appropriating matching funds to the New Hampshire Historical Society for renovations to the Stone Warehouse in Concord. Capital Budget Committee. Ought to Pass. Senator Baldizar for the committee.

SENATOR BALDIZAR: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 492-FN-A, an act relative to the Veterans' Cemetery committee and site suitability testing for a Veterans' Cemetery and making an appropriation therefor. Capital Budget Committee. Ought to Pass. Senator Shaheen for the committee.

SENATOR SHAHEEN: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 605-FN-A-LOCAL, an act changing the percentage of a municipality's share for local bridge improvement. Capital Budget Committee. Ought to Pass with Amendment. Senator Wheeler for the committee.

2848B

Amendment to HB 605-FN-A-LOCAL

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 New Covered Bridges; Expenditures. Amend RSA 234:28 to read as follows:

234:28 Limitation on Expenditures.

I. The total amount that may be expended on any bridge under this subdivision for the above purpose shall in no instance exceed the estimated sum that might be necessary for the construction or reconstruction of a bridge under RSA 234:4, 10 and 11.

II. The commissioner of transportation may waive the requirement for new covered bridges that replace a covered bridge which was destroyed within the previous 5 years of application under RSA 234:5.

AMENDED ANALYSIS

This bill modifies the cost apportionment between municipalities and the state and includes bridges or class II, IV on V highways. Current law includes only bridges on class II and V highways.

This bill permits the commissioner of the department of transportation to waive expenditure limitation for certain new covered bridges.

SENATOR WHEELER: I move the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 196-FN, an act relative to the method for financing additional benefits for retirement system members. Finance Executive Committee. Inexpedient to Legislate. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 200-FN-A, an act relative to an actuarial audit of the New Hampshire retirement system, paid for from retirement system funds. Finance Executive Committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

2855B

Amendment to HB 200-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT

relative to an actuarial audit of the New Hampshire retirement system paid for from retirement system funds, relative to supplemental allowances for retirement system members, and abolishing the New Hampshire retirement system special reserve account.

Amend the bill by replacing all after section 1 with the following:

2 Method of Funding Additional Benefits for Member Classifications. RSA 100-A:16, II(h) is repealed and reenacted to read as follows:

(h) There shall be a special account for additional benefits held by the board of trustees. The special account shall be subdivided into 4 components representing the 4 retirement system member classifications. Beginning with the fiscal year ending June 30, 1993, the amount accredited annually to the special account shall be determined as follows:

(1) Each component of the special account shall first be credited with all the earnings of that component for the fiscal year.

(2) All of the earnings of the remaining assets of the retirement system in excess of the assumed rate of return as determined by the trustees shall be allocated to the 4 member classifications.

(3) None of the assets held in the special account shall be used in the actuarial determination of the rate percent of normal contribution as set forth in subparagraphs (b), (c) and (d).

(4) The actuarial cost of all legislation enacted during each fiscal year and calling for funding from the special account shall be withdrawn from the respective components of the special account, as of June 30 of each year, after funds are credited to the special account as provided in this subparagraph. The special account shall be used only to fund or partially fund additional benefits as follows: first, to provide supplemental allowances, or COLA's, pursuant to RSA 100-A:41-a, and, second, to the extent that funds may be available in the special account, to provide additional benefits to retired members and beneficiaries of the retirement system.

3 Earnings in Special Reserve Allocated to Special Account Components. On June 30, 1993, all of the earnings held in a special reserve under RSA 100-A:16, II(h) shall be allocated to the respective 4 member classifications in RSA 100-A:16, II(h) following the abolition of the special reserve in section 2 of this act.

4 Granting Supplemental Allowances. Amend RSA 100-A:41-a, I and II to read as follows:

I. Any member of the New Hampshire retirement system or any of its predecessor systems, after retirement, or any beneficiary of such member who is receiving a monthly allowance, shall be entitled to receive supplemental allowances, which may also be referred to as cost of living adjustments or COLA's[, if and when enacted by the legislature], ***beginning July 1, 1994, and on every July 1 thereafter. Such supplemental allowances shall be granted by the trustees annually. The amount of such additional allowances shall be dependent upon the sufficiency of funds in the special account created by RSA 100-A:16, II(h), as provided in paragraph II. For the purpose of reaching this determination, the actuary shall look at each member classification component of the special account separately. The***

amount of the additional allowance shall be determined separately for retired members and beneficiaries of each member classification, and shall be a multiple of 1/4 percent, not in excess of 5 percent, depending on the amount available in each respective component of the special account, or shall be zero if funds in the respective component of the special account are insufficient for a 1 percent additional allowance. To be eligible to receive such an additional allowance the retired member or beneficiary must have been receiving benefits for the previous 12 months prior to the date on which the supplemental allowance is granted. Any such supplemental allowance [when granted by the legislature] shall become a permanent addition to the beneficiary's base retirement allowance, and shall be included in the monthly annuity paid to the retired member, or to the member's beneficiary if the member is deceased and the beneficiary is receiving an allowance under RSA 100-A:8, 100-A:9, 100-A:12, 100-A:13 or similar provisions of predecessor systems.

II. The granting of any such supplemental allowance, or of any increase in supplemental allowances, shall be contingent on terminal funding of the total actuarial cost thereof at the time of granting. Such terminal funding shall be from the special account established under RSA 100-A:16, II(h)[, or from such other source as the legislature may determine].

5 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.

II. Sections 2 and 3 of this act shall take effect June 30, 1993.

III. The remainder of this act shall take effect July 1, 1993.

AMENDED ANALYSIS

This bill requires the legislative budget assistant to hire an independent and nationally known accounting firm to perform an actuarial audit of the New Hampshire retirement system. The audit and report must be completed by December 15, 1993. The cost of the audit is paid for by retirement system funds.

This bill changes the method of funding additional benefits for members of the New Hampshire retirement system by amending the retirement system special account. The bill amends the special account by eliminating the special reserve and allocating all of the earnings held in the special reserve to the respective 4 member classifications.

Beginning on July 1, 1994, this bill changes the way cost of living adjustments (COLA's) are determined and granted for retirees of the New Hampshire retirement system. COLA'S are granted on an annual basis upon a determination by the retirement system board of trustees that sufficient funds exist in the special account to terminally fund the COLA.

The amount of the additional allowance is determined separately for each member classification. The additional allowance shall be a multiple of 1/4 percent, not in excess of 5 percent, or shall be zero if funds in the respective component of the special account are insufficient for a 1 percent additional allowance. A retired member or beneficiary must have been receiving benefits for the previous 12 months prior to the date on which the supplemental allowance is granted.

SENATOR BLAISDELL: I move the committee report of ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 214-FN-A, an act relative to results of toxicology tests and the salary of the forensic toxicologist and making an appropriation therefor. Finance Executive Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 245-FN, an act permitting the state treasurer to appoint 2 assistant state treasurers. Finance Executive Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 262-FN, an act providing a 5 percent cost of living adjustment for teacher members of the retirement system and relative to when cost of living adjustments may be granted to retirement system members. Finance Executive Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 417-FN, an act providing a 5 percent cost of living adjustment for permanent policemen members of the retirement system and relative to when cost of living adjustments may be granted to retirement system members. Finance Executive Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 433-FN-LOCAL, an act providing a cost of living adjustment for group I and group II retirement system members. Finance Executive Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 440-FN, an act providing cost of living adjustments for certain employee members of the retirement system. Finance Executive Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 594, an act relative to medical and surgical benefits for group I and group II retired employees. Finance Executive Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 612-FN-LOCAL, an act relative to changes in the maximum weekly benefit amount for unemployment compensation. Finance Executive Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 51, an act relative to establishing a tax on business enterprise tax value base and amending the Business Profits Tax and Business Corporation Act. Ways & Means Committee. Majority Report: Inexpedient to Legislate. Senator Hollingworth for the majority. Minority Report: Ought to Pass with Amendment. Senator McLane for the minority.

2869B

Amendment to HB 51-FN-A

Amend RSA 77-A:5, IX as inserted by section 9 of the bill by replacing it with the following:

IX. Taxes paid pursuant to RSA 77-E. No amount of tax paid pursuant to RSA 77-E and used as a credit against the taxes due under RSA 83-C or RSA 400-A shall be allowed as a credit under this paragraph except as provided in RSA 83-C:2-a or RSA 400-A:34-a. Any unused portion of the credit allowed under this paragraph may be carried forward and allowed against the tax due under this chapter for 5 taxable periods from the taxable period in which the tax was paid.

Amend RSA 77-E as inserted by section 12 of the bill by inserting after section 12 the following new section:

77-E:13 Application of Credit for Business Enterprise Tax Against Business Profits Tax. If the business enterprise liable for taxes imposed by this chapter is a member of a unitary business within the meaning of RSA 77-A:1, XIV, then the entire amount of the taxes due under this chapter by the individual member of such unitary business shall be allowed as a credit pursuant to RSA 77-A:5, IX, against such individual member's portion of the total tax liability of the unitary business under RSA 77-A. In the event that the individual member's credit exceeds such member's portion of the total tax liability of the unitary business, the excess of such credit shall be allowed as a credit against any other individual member's tax liability under RSA 77-A, provided such other member is also subject to the tax imposed by this chapter. The commissioner shall adopt rules, in accordance with RSA 541-A, to determine an individual member's portion of the total tax liability under RSA 77-A based upon each member's activity within New Hampshire.

Amend the bill by replacing section 13 with the following:

13 New Section; Utility Franchise Tax; Credit for Business Enterprise Tax. Amend RSA 83-C by inserting after section 2 the following new section:

83-C:2-a Credit for Business Enterprise Tax. The tax imposed under RSA 77-E shall be allowed as a credit against the taxes due under this chapter and shall be deemed to be taxes paid pursuant to this chapter for the purposes of RSA 77-A:5, I. To the extent the credit for taxes paid pursuant to RSA 77-E exceeds the taxes imposed under this chapter, such excess shall be deemed to be taxes imposed under RSA 77-E and shall be allowed as a credit against the taxes due under RSA 77-A as provided by RSA 77-A:5, IX.

Amend RSA 400-A:34-a as inserted by section 23 of the bill by replacing it with the following:

400-A:34-a Credit for Business Enterprise Tax. The tax imposed under RSA 77-E shall be allowed as a credit against the taxes due under this chapter and shall be deemed to be taxes paid pursuant to this chapter for the purposes of RSA 77-A:5, III. To the extent the credit for taxes paid pursuant to RSA 77-E exceeds the taxes imposed under this chapter, such excess shall be deemed to be taxes imposed under RSA 77-E and shall be allowed as a credit against taxes due under RSA 77-A as provided in RSA 77-A:5, IX.

Amend the bill by replacing all after section 27 with the following:

28 Three-Year Business Transition Credit.

I. There shall be allowed as a credit against the tax due under RSA 77-E for the first tax period ending on or after July 1, 1993, and each of the 2 succeeding tax periods an amount equal to the business enterprise's business transition loss amount. Any business transition loss amount which is not fully utilized as a credit under this section with respect to one tax period may be carried forward for use against tax due under RSA 77-E for later tax periods. The total amount of allowable business transition credit shall not exceed the total amount of taxes due and paid by the business enterprise under RSA 77-A for taxable periods ending on or after January 1, 1987, and ending on or before June 30, 1990.

II. For purposes of this transition section, "business transition loss amount" means the product of (a) the aggregate net operating loss carryover of a business enterprise determined pursuant to section 172 of the United States Internal Revenue Code attributable to taxable periods ending on or after May 1, 1990, and ending on or before June 30, 1992, without reduction for any amounts which may have been carried back for federal income tax purposes, and (b) with respect to each applicable taxable period, the rate of tax specified in RSA 77-A:2. In the case of a business enterprise which is not treated as a corporation under subchapter C of the United States Internal Revenue Code, "business transition loss amount" shall be based on the amount that would be determined under section 172 of the United States Internal Revenue Code if the business enterprise were a C corporation. For purposes of this definition, a business enterprise's aggregate net operating loss carryover shall not exceed that amount which is allocated this state by application of the apportionment method described in RSA 77-A:3. In addition, a business enterprise's aggregate net operating loss carryover shall not exceed that amount which was generated directly from operations of such business enterprise and not from operations of another enterprise which may be an affiliate. For purposes of this definition, the aggregate net operating loss carryover shall not be subject to the $250,000 annual limitation established in RSA 77-A:4, XIII.

III. Notwithstanding any other provision of RSA 77-A to the contrary, if a business organization applies the business transition credit to reduce tax due under RSA 77-E, the amount of net operating loss that may be carried forward under this section shall be reduced by an amount equal

to (a) the amount of credit applied to reduce tax due under RSA 77-E, divided by (b) the rate of tax specified in RSA 77-A:2 and applied for purposes of determining the business transition loss amount for each applicable tax period under this transition section.

IV. The amount of business transition credit utilized as a credit against the tax due under RSA 77-E shall not constitute business enterprise taxes paid for purposes of the credit allowed under RSA 77-A:5, IX.

V. For purposes of this section the taxable period of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to the ending of any taxable period specified in this section shall be deemed to have ended on the last day of such taxable period.

29 Repeal. The following are repealed:

I. RSA 77-A:5, II and VIII, relative to certain credits against the business profits tax.

II. RSA 84, relative to the taxation of banks.

III. RSA 162-L:8, I(b), relative to investment tax credits against certain taxes.

IV. RSA 293-A:1.31-1.34, relative to certain licensing fees under the business corporation act.

V. RSA 293-A:1.37(a), relative to the administration of the business corporation act.

VI. RSA 305-A:1, III, relative to a notification requirement for foreign partnerships.

30 Effective Date.

I. Sections 8, 9, 11, 12, 21, 22, 23, and paragraphs V and VI of section 29 of this act shall take effect July 1, 1993, and shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993. In the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993, for purposes of this act.

II. Section 6 of this act shall take effect April 1, 1994, and shall apply to returns and taxes due on account of taxable periods ending on or after April 1, 1994. In the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to March 31, 1994, the taxable period shall be deemed to have ended on March 31, 1994, for purposes of this act.

III. Section 7 of this act shall take effect April 1, 1995. In the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to March 31, 1995, the taxable period shall be deemed to have ended on March 31, 1995, for the purposes of this act.

IV. Section 29, paragraph I of this act shall take effect July 1 1993, and shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1993. In the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993, for the purposes of this act.

V. The remainder of this act shall take effect July 1, 1993.

SENATOR MCLANE: The Business Enterprise Tax is obviously one of the most important elements of the Governor's program and you have before you the Governor's bill as he has submitted it to the Senate. The Governor campaigned on the promise of reforming the BET. With HB 51-FN-A he has fulfilled this promise. The bill before us is the Governor's proposal. At the request of the Governor, the committee added the Business Transition Tax Credit or Digital Amendment as an amendment to the bill passed by the House. This is a complex bill. It not only introduces a new tax, the BET, but also reduces the rate of the Business Profits Tax eventually to seven percent in two steps and repeals all of the corporate filing fees. Although it is a complex bill, it will create a simpler tax structure. But above all, this bill will create a fairer tax structure. Every business will now pay its fair share of the cost of the public projects and services which benefit them all. As the Governor said when he introduced it, the bill, "fairness is not an academic issue, since the Business Profits Tax is being challenged in the courts". The Business Transition Tax Credit proposed by the Governor will spare businesses like Digital which have paid the Business Profits Tax for many years and are now operating at a loss from the impact of the tax. Since this amendment reduces the revenue from the Business Enterprise Tax, the reduction of the Business Profits Tax has been delayed for nine months. This bill is revenue neutral. When the new tax is imposed with all of the necessary credits, adjustments, and repeals, there will be no net affect on estimated revenues for the biennium. I stress this point which I know has been a source of concern to the Senate. For more than 10 years, we have sought to address the inequities of the Business Profits Tax, all of our efforts have run afoul of the Constitution. This proposal, as it was said, will pass constitutional muster. It is not a perfect solution No tax will ever satisfy everyone or even anyone; but, it is a solution, and we would portray ourselves by rejecting it. I urge my colleagues to join with me in supporting this effort to make our tax system simpler and fairer and far more broad based.

SENATOR WHEELER: Senator McLane, included in HB 51 are there other taxes that we're not letting lapse, other revenues?

SENATOR MCLANE: No, those are other bills, other bills that will be before you.

SENATOR WHEELER: Thank you.

SENATOR HOLLINGWORTH : Mr. President, the majority of the committee on Ways and Means believe that HB 51 is a very complex bill. When it reached the Senate it was very complex and it is even more complex now. Let me be perfectly clear, the bill that is before us now is the Governor's proposal. The only amendments that are attached to this bill are, A, the Business Transition Tax Credit, which the Governor proposed. And, B, changes in the treatment of the non-profit, requested by the Department of Revenue Administration. We are voting on Governor Merrill's reform business taxation. This bill does not only introduce a new broad based tax on virtually every business in the state, it also makes adjustments to existing taxes and credits. And most of all it repeals the most important economic development incentives introduced by this Senate in 1991. The majority of the committee understands the need to reform our system of business taxation in order to establish a greater consistency and fairness. In many respects, the Business Enterprise Tax is a promising approach to that problem. The Senate held joint hearings on this bill; the Ways and Means and Economic Development to consider all the various aspects of this proposal. We heard very little testimo-

ny in support of this bill. I have had many, many, calls from my constituents and businesses in my district expressing opposition to this bill. This bill represents mind you, a major change in our philosophy of taxation. For the first time we are taxing all businesses regardless of whether they operate making a profit or whether they lose money. Many say that this taxation proposal on payroll and on interest, it will in fact be a disincentive to businesses to expand by adding employees and by increasing debt. Many fear that the low rate of only 1/4 of one percent is just a starting point. That while we have to deal with, soon, the Medicaid money disappearing, we may find ourselves with a $150 million that we need to find to plug the hole. Why, when businesses are struggling from recession, should we tax them? Our budget is in surplus, revenues are ahead of estimates and the Governor repeatedly tells us that apart from the Business Profits Tax, our taxation system in this state is the envy of the nation. The suit filed against the Business Profits Tax by Cabletron recently failed in Superior Court. The majority of the committee found no compelling reason to introduce a controversial tax which would impact every business in New Hampshire. Finally, to pay for this tax, the Governor would repeal the incentives for creating jobs and making investments introduced by the Senate as well as the weighting of the sales factor which rewards the companies that operate in New Hampshire, provides jobs and income to our people. The Governor says that these incentives must be repealed so that the BPT can be reduced, but the reduction in the BPT must be delayed to pay for the Governor's Business Taxation Tax. This amendment spares companies who lose from paying the new tax. If companies with operating losses should not pay taxes, then why introduce the BPT in the first place? By delaying the reduction of the BPT for nine months this bill, would decrease the BPT to seven percent, just three months before the end of the biennium. Just when the budget for the next biennium is being prepared. Just when we will be looking for $150 million. How long do you think the BPT then will remain at seven percent? Although the committee understands and appreciates the Governor's motives, the majority concluded that the proposal is essentially flawed in its present form and it requires more work; therefore, we would ask you for a vote of inexpedient to legislate.

Question is on the minority report of ought to pass with amendment.

A roll call was requested by Senator W. King.

Seconded by Senator Blaisdell.

The following Senators voted Yes: MacDonald, Hough, McLane.

The following Senators voted No: Lamirande, W. King, Fraser, Lovejoy, Currier, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas: 3 - Nays: 21

Committee amendment fails.

SENATOR CURRIER: I am rising in opposition to ordering HB 51 to third reading. When I entered the Senate some four and half years ago, the first bill that I sponsored was SB 200. SB 200 was attempting to do exactly what this HB 51 does in terms of broadening the Business Profits Tax. Because as a businessman, broadening the base of the Business Profits Tax made sense to me. After all, I was paying a Business Profits Tax but others doing business in New Hampshire were not. It became

semantics to me after a very short period of time after that first session when former Senate President Bill Bartlett handed me my head and the bill was dead before I even returned to my seat at the hearing. The motion was immediately made and the bill died in committee as inexpedient to legislate. I learned a lesson then, real early in the process. To date, some of the sharpest minds in business and in constitutional laws, have considered ways to meet the constitutional muster of broadening the base of the Business Profits Tax, the proportional issue being the significant one. Some thought that former Governor Gregg had a clever campaign ad during a campaign recently that said, "if it walks like a duck and talks like a duck, it must be a duck, quack". I call those funds that I pay employees, I call those wages. But my employees call them income. Semantics? I don't know, maybe so. Corporations call money left over after expenses, profits. Sub chapter S corporations and partnerships and proprietorships and people like doctors and lawyers, call money leftover in their business after expenses, they call that income. So that they in fact, don't pay a Business Profits Tax on that. Does this make sense? I don't believe so or is it semantics again? Putting semantics aside, there are really two reasons that I can't support this bill, wages or income and its additional burden on small businesses in the state, even if it is a credit toward the BPT. I guess it does matter when you tax it, you know whether it is a wage or as an income in terms of making a difference with this particular bill. But the hardest thing for me to understand in this proposal is that taxing at a quarter of one percent interest paid on debt, that to me, doesn't make any sense when in fact in the federal statutes, interest paid out is tax deductible. You don't pay a tax on it. But in this case, with this bill, if it is passed, it would become subject to a quarter of one percent. The third reason that comes to mind and it is the most serious, is that a quarter of one percent is not much right now. My payroll at my company, differential to what Senator Russman thinks, is almost a million dollars, it is actually $897,000. A quarter of one percent of that isn't really significant in the sense that it is only $2,500 on a million. But the thing is that what happens three years from now when the revenue from the Medicaid Enhancement Fund dries up? Does that amount of money, that quarter of one percent then become a half of a percent, one percent, three percent, ten percent? I am not sure and that scares the hell out of me, quite frankly. Because I know that there is a Rooms and Meals Tax that used to be six percent that is now eight because the Business Profits Tax is very similar. I just don't trust the process having had the experience of dealing with revenue sharing, and you don't want to hear that story again. But, that is probably what scares me most about this bill. Another thing is that Digital had some serious losses in 1992, as I understand it, and they would be subject to this bill. But, when they yelled loud and clear, what happened? They were dealt with to try to appease every situation. There was some kind of amendment credit. I think that was probably the amendment that we just defeated, I am not really sure. But in terms of dealing with that, if it was good for a company the size of Digital, why isn't it as good for the companies that are smaller than Digital and so forth? There is one other big flaw in the bill. It still doesn't deal with the ability of a corporation to bonus out at the end of the year any profits. What it does is it puts the burden on the reasonable compensation clause. For example, my company had a really significant year last year. After working probably 14 to 16 hours a day for 15 years, we finally became fairly profitable. With the loophole, I had the opportunity to bonus out $200,000 and pay it to stockholders or people who work in the cor-

poration. Now those people could have turned around after they paid their federal income tax and taken that money and loaned it back to the company at interest. Now the only thing that would have been taxable, would have been the wages, the quarter of one percent. In other words, that $200,000 profit would have been shifted from the BPT. I wouldn't have had to pay the eight percent on it. I would have had to pay the federal income tax on it, but in terms of paying Uncle Sam or my employees, it was better to bonus those out to my employees and pay Uncle Sam and them, because they had better wages as a result of that. So it doesn't really make sense. We still have a loophole in there that people can still bonus it out at a lower rate. They do obviously have to pay the federal income tax on it, but that is insignificant in an overall business scheme. So this doesn't really make sense to me any more than the current bad situation that exists. It is making a bad situation worse as far as I am concerned, because it really places a burden on small businesses in New Hampshire and it is an unnecessary burden at this time.

Question is on ordering to third reading.

A roll call was requested by Senator W. King.

Seconded by Senator Blaisdell.

The following Senators voted Yes: MacDonald, Hough, McLane.

The following Senators voted No: Lamirande, W. King, Fraser, Lovejoy, Currier, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas: 3 - Nays: 21

Motion of ordering to third reading fails.

Question is on the majority report of inexpedient to legislate.

A roll call was requested by Senator W. King.

Seconded by Senator Blaisdell.

The following Senators voted Yes: Lamirande, W. King, Fraser, Lovejoy, Currier, Disnard, Roberge, Blaisdell, Wheeler, Baldizar, Pignatelli, Colantuono, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: MacDonald, Hough, McLane.

Yeas: 21 - Nays: 3

Motion of inexpedient to legislate is adopted.

Recess.

Out of recess.

MOTION OF RECONSIDERATION

Senator W. King having voted with the prevailing side moved reconsideration on HB 51 an act relative to establish a tax on business enterprises value base and amending the Business Profits Tax and Business Corporation Act, whereby we ordered HB 51 inexpedient to legislate.

SENATOR W. KING: Having spoken with Senator Hough who had just returned from speaking with the Governor, I ask that you vote to reconsider this because after all it is a very important piece of policy legislation and it seems to me that we ought to give a reasonable length of time for the Governor to have some opportunity to address some of the members

of this Senate who he has not had an opportunity to talk with. I ask that you reconsider this and I believe that there will be another motion to follow that.

Adopted.

Recess.

Senator Barnes in the Chair.

MOTION TO RECOMMIT

Senator Hough moved that we recommit HB 51, an act relative to establish a tax on business enterprises value base and amending the Business Profits Tax and Business Corporation Act, to the Ways and Means committee.

SENATOR HOUGH: Mr. President, I rise to move HB 51 to be recommitted to the committee on Ways and Means. We are now approaching waiting hours of this session of the legislature and we will be bringing forward our biennial budget message. Undoubtedly, we will be going to conference with our colleagues on the other side of the wall; and out of that in a time when we find state government and not the people of New Hampshire, but the state government, in a better position than it was two years ago or four years ago. Hopefully, we can structure an operating budget that recognizes basic and essential needs of the people of the state of New Hampshire. Likewise, we have an opportunity that seems to come along once in ten years; to address the main mechanism that we use for generating revenue in the state of New Hampshire, and that is taxing businesses. Some of us were in this State House and some of us were in this chamber ten years ago when we came out of a less severe recession and revenues started to turn around on existing taxes. We had neither the will or the resolve to address business tax reform, and it was a missed opportunity. There is no question that this body has ignored the very correct leadership of Governor Merrill when he suggested at the outset of this session that we look to business tax reform as being revenue neutral, an attempt to include other business activities than those very few businesses that pay the bulk of the Business Profits Tax. He clearly recognized that the eight percent Business Profits Tax was a disincentive for capital formation creation of a new business enterprise. We have moved through a session where we have had a number of new initiatives and new pieces of legislation come forward and this body has spoken on an imperfect piece of legislation. It is clear that it is not acceptable in its present form. My motion is to bring back that legislation into the committee on Ways and Means. And as I told Governor Merrill, "I am committed from this moment forward to work with the committee on Ways and Means, or quite frankly, without them, so that we can bring HB 51 back before us." As we come to the final resolution of the Senate's position on HB 1 and HB 2 and HB 25, it can't be drafted until we know the outcome of the events that are taking place on Friday of this week. Until we know those things we are not only doing ourselves a great disservice, we're doing a great disservice to the government of the state of New Hampshire and we're doing a great disservice to the businesses in the state of New Hampshire; and ultimately, we're doing a great disservice to the people of the state of New Hampshire because we are robbing ourselves of an opportunity to correctly address that section of our state endeavor, the business community, that we have chosen to be the base of taxation in this state. I ask that you support my motion to recommit this bill to the committee so that we can all work and continue to analyze this piece of legislation and come out with a piece of legislation that we can support. And when we support it we can go to our colleagues across

the hall and take advantage of an opportunity to effectively and efficiently address not only tax policy in this state but economic policy. Please support the motion to recommit to committee.

Adopted.

HB 51 is recommitted.

Recess.

Senator Hough in the Chair.

Senator McLane offered the following Resolution:

SR 10

STATE OF NEW HAMPSHIRE
In the year of Our Lord one thousand
nine hundred and ninety-three

A RESOLUTION

affirming revenue estimates for the fiscal years 1994 and 1995.

Whereas, the Senate Ways and Means Committee has considered what the revenue estimates should be for fiscal years 1994 and 1995 and has presented those estimates to the Senate now; therefore, be it

Resolved by the Senate:

That the Senate wishes to go on record as affirming the following revenue estimates for fiscal years 1994 and 1995:

	1994	1995
GENERAL FUND		
Beer	$ 11,000,000	$ 11,000,000
Board and care	70,600,000	71,600,000
Medicaid hospital reimbursement	200,100,000	211,800,000
Business profits tax	133,500,000	137,500,000
Estate and legacy tax	33,000,000	35,000,000
Insurance	50,000,000	51,000,000
Interest and dividend tax	38,800,000	39,800,000
Liquor	63,000,000	64,000,000
Meals and rooms tax	97,000,000	99,000,000
Parks income	5,000,000	5,000,000
Dog racing	4,000,000	4,000,000
Horse racing	2,000,000	2,000,000
Real estate transfer tax	30,750,000	32,800,000
Communications tax	33,450,000	35,500,000
Cigarette tax	45,000,000	44,000,000
Utilities	18,500,000	19,500,000
Other	42,000,000	43,000,000
Courts	21,000,000	21,000,000
Savings bank tax	4,000,000	4,000,000
Total	$902,700,000	$931,500,000
HIGHWAY FUND		
Gasoline tax	$ 97,563,000	$ 99,537,000
Motor vehicle fees	56,070,000	56,729,000
Miscellaneous	8,774,000	8,764,000
Total	$162,407,000	$165,030,000
FISH AND GAME FUND		
Fish and game licenses	$ 5,816,000	$ 5,816,000
Fines and penalties	89,000	89,000
Miscellaneous sales	166,000	166,000
Indirect costs	270,000	270,000
Total	$ 6,341,000	$ 6,341,000

SENATOR MCLANE: Mr. President, it is with pride and pleasure that I have placed before you the latest revenue estimates from the Ways and Means committee in a unanimous vote yesterday. We looked over, first of all, what the House had estimated and we felt that it was too low. We consulted with Charles Connor and we were unanimous in the figures that we have placed before you.

SR 10 is adopted.

HB 52-FN-A, an act relative to certain hospitals exempt from the Meals and Rooms Tax. Ways and Means Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: This bill was already passed by the Senate, Mr. President. This is the fourth part of this Rooms and Meals package. The Senate Ways and Means asks that you move ought to pass on HB 52.

Adopted.

Ordered to third reading.

HB 60-FN-A, an act setting a rate for the communications services tax. Ways and Means Committee. Ought to Pass with Amendment. Senator McLane for the committee.

2837B

Amendment to HB 60-FN-A

Amend the bill by replacing section 1 with the following:

1 Rate of Tax for Biennium Ending June 30, 1995; Intrastate and Interstate Communications Services. Notwithstanding RSA 82-A:3 and 82-A:4, for the period beginning July 1, 1993, and ending June 30, 1995, the rate of tax is 5.75 percent on the gross charge for communications services purchased at retail from a retailer.

AMENDED ANALYSIS

This bill sets a temporary rate for the biennium ending June 30, 1995, for the communications services tax at 5.75 percent for intrastate and interstate communications services. This is a decrease in the rate effective for the biennium ending June 30, 1993, which is set at 6 percent.

SENATOR MCLANE: HB 60 that is before you is the Communications Tax and we will then have the Real Estate Transfer Tax and the Rooms and Meals. In all three of these bills, these taxes would automatically go back to their original percentage unless we pass some bill. So it is very important that these bills not be killed. The Governor has presented all three bills. I am TAPE INAUDIBLE two out of the three bills with fine rhetoric about the fact that he was reducing taxes. But I think that the Ways and Means committee is well aware that if we did not pass these bills, the taxes would be reduced further. What we have done in all three of the bills before you is to make an ever so slight change upward from the House bill. In that manner, the Senate will go into Committees of Conference and the consultation over the budget from a position of strength and from a position of having made some amendment so that we must go to a Committee of Conference. There is no doubt in anyone's mind that these bills will stay on the docket until the end. The first one, the Communications Tax would go back to three percent if it was not passed. But we have arbitrarily put it to 5.75 percent because the House put it at 5.5 and the Governor. So I ask you to pass these next three bills and we will go into the Committee of Conference with them as having a Senate position.

SENATOR COLANTUONO: I heard you say that you arbitrarily put it at 5.75, is there any other reason besides this?

SENATOR MCLANE: Well I didn't want to put it lower because I was afraid that the House would just accept it and this is not a small amount of money. We are looking at about two to three million dollars per half of percent of the Communications Tax. I want to make very clear that the revenue estimates that we have just adopted, assume that we have passed these three bills.

SENATOR COLANTUONO: That was going to be my next question. Thank you.

SENATOR MCLANE: They have made that assumption, and I think probably the total is five or six million because of the slight changes in percent.

SENATOR BARNES: I have a very small question.

SENATOR MCLANE: Yes, Mr. President.

SENATOR BARNES: Oh, you do like your parking space? Temporary tax, do we have to . . . is there something that says that we have to have temporary tax in the reading of this? Because I have an awful problem with temporary taxes, they never seem to be temporary?

SENATOR MCLANE: Well that, I think, is a very good observation. They are temporary because it makes them tempting. And when we raised the Communication Tax several years ago, we made it temporary and made it automatic that it would go back to three percent. What we are doing is postponing the word temporary for another two years. Make no mistake about it.

SENATOR BARNES: Would you believe that I have an awful problem with the word temporary?

SENATOR MCLANE: It was probably a good way of getting the bill passed at the time and it probably still is.

SENATOR BARNES: Oh, oh, thank you.

Question is on the committee amendment.

A roll call was requested by Senator Wheeler.

Seconded by Senator Colantuono.

The following Senators voted Yes: Hough, Blaisdell, McLane.

The following Senators voted No: Lamirande, W. King, MacDonald, Fraser, Lovejoy, Currier, Disnard, Roberge, Wheeler, Baldizar, Pignatelli, Colantuono, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas: 3 - Nays: 21

Committee amendment fails.

Question is on ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator Colantuono.

The following Senators voted Yes: Hough, Blaisdell, McLane.

The following Senators voted No: Lamirande, W. King, MacDonald, Fraser, Lovejoy, Currier, Disnard, Roberge, Wheeler, Baldizar, Pignatelli, Colantuono, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas: 3 - Nays: 21

Motion of ordering to third reading fails.

Senator Colantuono moved inexpedient to legislate.

A roll call was requested by Senator Blaisdell.

Seconded by Senator Delahunty.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Fraser, Lovejoy, Disnard, Roberge, Wheeler, Baldizar, Pignatelli, Colantuono, Podles, Barnes, J. King, Russman, Bourque, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Hough, Currier, Blaisdell, McLane.

Yeas: 20 - Nays: 4

Motion of inexpedient to legislate is adopted.

HB 61-FN-A, an act relative to the rate of the Real Estate Transfer Tax. Ways and Means Committee. Ought to Pass with Amendment. Senator McLane for the committee.

2836B

Amendment to HB 61-FN-A

Amend the bill by replacing section 1 with the following:

1 Rate of Tax for biennium Ending June 30, 1995, Real Estate Transfer Tax. Notwithstanding the provisions of RSA 78-B:1, I, for the period beginning July 1, 1993, and ending June 30, 1995, the rate of the tax is $.5125 per $100, or fractional part thereof, of the price or consideration for such sale, grant or transfer; except that where the price or consideration is $4,000 or less there shall be a minimum tax of $20.50. The tax imposed shall be computed to the nearest whole dollar.

AMENDED ANALYSIS

This bill sets a temporary rate for the biennium ending June 30, 1995, for the real estate transfer tax at $.5125 per $100. This is a decrease in the rate effective for the biennium ending June 30, 1993, which was set at $.525 per $100.

SENATOR MCLANE: The Real Estate Transfer Tax presently is $.525 per thousand. It will automatically go to $.350 per thousand on June 30, 1993. Presently the rate is six percent. The Governor has suggested 5.5 and we have gone in our amendment to 5.7. This also would allow this bill to be negotiated and, as I have pointed out, it will revert back to $.350 if this bill is not passed.

Recess.

Out of recess.

SENATOR MCLANE: I made an error in the exact figure that I was using. The original HB 61 would have put the Real Estate Transfer Tax at $5 per thousand. It is presently $.525 per thousand. It would automatically go to $.350 per thousand. Our amendment would put it as $5.12-1/2 cents.

Amendment adopted.

SENATOR LAMIRANDE: Senator McLane, my only question to you is that you indicated that it was $5.50?

SENATOR MCLANE: At the present time, I think that Senator Lovejoy has clarified for me that it is $5.50 on the seller and $5 on the buyer.

SENATOR LOVEJOY: The tax now is per thousand and it is $10.50 per thousand. And that is divided equally.

SENATOR MCLANE: I was merely transferring it as the legislation is to just the buyer or the seller.

SENATOR LAMIRANDE: Oh, alright. Thank you very much, Senator McLane.

Ordered to third reading.

Senators Colantuono and Wheeler in opposition to HB 61.

HB 62-FN-A, an act relative to the Meals and Rooms Tax for the period beginning July 1, 1993, through June 30, 1995. Ways and Means Committee. Ought to Pass with Amendment. Senator McLane for the committee.

2835B

Amendment to HB 62-FN-A

Amend paragraph II(a) of section 1 of the bill by replacing it with the following:

(a) Three cents for a charge between $.35 and $.37 inclusive;

AMENDED ANALYSIS

This bill extends the temporary meals and rooms tax rate at 8 percent through the biennium ending June 30, 1995.

SENATOR MCLANE: This is the Rooms and Meals Tax, HB 62. It is presently at eight percent. If we do not pass this bill it will automatically, on the 30th of June, go back to seven percent. If it did that, we would lose not only 24.6 million plus, into the general fund, but we would also lose $29.5 million in Medicaid reimbursement. For that reason it is extremely important because of the Medicaid, $200,000,000, that we keep the Room and Meals Tax at eight percent. So for that reason, we didn't fool around with the rate in order to go into a Committee of Conference. We fooled around with how much it would cost you, 3 cents for 35 cents instead of 36. A vast difference. But in essence this is the Governor's bill. You used to be able to get a donut and a cup of coffee for 35 cents and now I can't think of what you can get for 35 cents. So I don't think that it will make any difference to any of us that it has gone from 36 to 35 cents.

Amendment adopted.

Ordered to third reading.

Senator Wheeler in opposition to HB 62.

HB 412-FN, an act allowing liquor licenses for billiard facilities. Ways and Means Committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: I move the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 621, an act relative to the threshold for filing under the Business Profits Tax. Ways and Means Committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: I move the committee report of ought to pass.

Adopted.

Ordered to third reading.

HB 662-FN-A, an act relative to adjustments to gross business profits under the Business Profits Tax. Ways and Means Committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Mr. President and members of the Senate, this is a request from the Department of Revenue Administration. All that it does very simply is to clarify a statute.

Senator W. King moved to have HB 662-FN-A an act relative to adjustments to gross business profits under the Business Profits Tax, laid on the table.

Adopted.

LAID ON THE TABLE

HB 662-FN-A, an act relative to adjustments to gross business profits under the Business Profits Tax.

SUSPENSION OF THE RULES

Senator Blaisdell moved that the Rules of the Senate be suspended to dispense with the notice of a committee report in the calendar on HB 435-FN, an act relative to an alternate state contribution for surface water treatment systems. Finance committee.

Adopted by the necessary 2/3 vote's.

HB 435-FN, an act relative to an alternate state contribution for surface water treatment systems. Finance committee.

2886B

Amendment to HB 435-FN

Amend the bill by replacing section 3 with the following:

3 Appropriation. The sum of $1 for the biennium ending June 30, 1995, is hereby appropriated to the department of environmental services, division of water supply and pollution control, for the purposes of this act. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

Amend the bill by deleting section 4 and renumbering the original sections 5 and 6 to read as 4 and 5, respectively.

Amend the bill by replacing section 5 with the following:

5 Effective Date. This act shall take effect July 1, 1993.

SENATOR BLAISDELL: I have talked with most members of the Executive Department committee and Finance committee on this bill. When it came in, we are not getting into the policy of this bill, but what we have to get in is the financing. The House sent this bill over to us with about $900,000 in one area and $500,000 in another, $300,000 in another. It comes up to pretty close to $2.3 million. With no adjustments to their budget, and certainly we have not adjusted this in our budget at all. So what I am asking you to do is to vote for an amendment that I have passed out which will place one dollar in the bill. I want to be sure that we have a chance to sit down with the House and find out exactly where we are going to go on this. It is a very important piece of legislation, by the way, to some members of this Senate. Some of the communities that are involved in this have already done this work in taking care of their water supply and everything. So there is some money that is involved in the communities. But I want you to know that I don't know where right now where we are going to find $2.3 million to do this. I

would hope that you would let me pass this amendment so that we can get over into a Committee of Conference with the House and see if we can't decide to do something for the communities that have already done this work.

Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Cohen moved to have HB 493, an act revising the laws that require a prescription to purchase a hypodermic needle, taken off the table.

Adopted.

HB 493, an act revising the laws that require a prescription to purchase a hypodermic needle.

SENATOR COHEN: As you may recall a couple of weeks ago we had a somewhat lengthy discussion about what was then the needles bill, HB 493. We all agreed that the problem, the only outstanding problem, was disposal. We have amended this bill. We have worked on this bill to deal with the problem of disposal. Right now no states have laws that deal with the problems of needle disposal. Right now the addicts don't know, the public doesn't know how to dispose of needles correctly. We need to correct that. This amended bill which is being passed out corrects that. We believe that the Governor and the legislature together with the state's pharmacists and the medical profession, should join together to move New Hampshire to the forefront in the area of public education and the proper disposal of medical waste, in particular, hypodermic needles. We have amended HB 493 to do just that. We have established, I think, very clearly that HIV transmission by intravenous drug users is a medical and public health problem that affects far more than just the drug user. It is the number one cause of pediatric AIDS. Purchasers of hypodermic needles need information on how AIDS spreads and the proper and safe disposal of used needles. The moment that needles are purchased is the most opportune time to do that. If you look through the amended version it does that. Reducing drug addiction will help reduce the spread of AIDS. This will help do that. It is important that we get information on drug rehabilitation into the hands of the abuser. This will get that information to the abuser, and he or she can get help. Every time that a hypodermic needle is sold in this state, the purchaser will receive information on drug rehabilitation. We have also amended the bill to restrict the sale again, to adults, in such that sales of needles without prescriptions shall be limited to 10 at a single purchase. And this is perhaps the most important part, that no hypodermic needle shall be sold without a prescription unless it is accompanied by a Sharps Trap container in which a used needle will be placed for disposal. This is a Sharps Trap right here. The person cannot buy needles without buying this disposal unit. It cost $1.50. They can't get the needles without purchasing this. This comes with directions, very simple directions. You put the needle and the syringe part in here, push it through and you can't get it out. Then you take the label up there and then you seal it up. This is an effective disposal method. They can't get their needles without purchasing this Sharps Trap. Again, it costs $1.50. The number one cause of pediatric AIDS is through parental intravenous use. So right now even if we don't care

about the drug abuser, if we care about saving innocent children's lives, because that is how they get the AIDS, through one parent who may have been an IV user. If we care about saving children's lives, we have to pass this bill. There is also part of this new amended version which has a study committee to work with other states because it is a regional problem to make further recommendations as they may be necessary. The AIDS epidemic is spreading. I believe that we must do all that we can to prevent it from getting worse. If HB 493 helps to save just one life then I believe it is worth enacting, and I strongly urge its passage.

Senator Cohen offered a floor amendment.

2818B

Amendment to HB 493

Amend the title of the bill by replacing it with the following:

AN ACT

relative to purchasing hypodermic needles, educating persons regarding safe disposal of needles and drug rehabilitation and establishing an advisory committee.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The general court recognizes that AIDS and hepatitis B are spreading in New Hampshire and in the nation. The general court is also aware of the tragic affliction of the newborn children of drug abusers with pediatric AIDS. The general court further recognizes the need to educate persons on the safe disposal of hypodermic needles and drug rehabilitation. Therefore, the general court hereby enacts this legislation which will place New Hampshire in the forefront on the issue of safe needle disposal in an effort to prevent the AIDS crisis and hepatitis B from spreading even further.

2 Prescription Not Required for Persons Over 18; Other Requirements. Amend RSA 318:52-c to read as follows:

318:52-c Sale of Hypodermic Syringe.

I.*(a)* Hypodermic syringes, needles or any instrument adapted for the administration of drugs by injection shall not be sold except in registered pharmacies. No person shall sell, furnish, or give to any person [or persons other than a duly licensed physician, dentist, veterinarian, nurse, podiatrist, pharmacist, or embalmer, or a hospital, sanitarium, clinical laboratory or any other medical institution or a state or governmental agency, or a regular dealer in medical, dental or surgical supplies, or a resident physician or intern of a hospital, sanitarium or other medical institution] ***under 18 years of age,*** an instrument commonly known as a hypodermic syringe, hypodermic needle or any instrument adapted for the administration of drugs by injection without the written or oral prescription of a duly licensed physician, dentist or veterinarian. Such prescription shall contain the name and address of the patient, the date of the prescription, the description of the instrument prescribed and the number of instruments prescribed.

(b) The following conditions shall apply to all purchases of hypodermic syringes or needles:

(1) Pharmacists shall provide to each purchaser at the time of purchase information regarding the safe disposal of hypodermic syringes or needles, including local disposal locations or a telephone number to call for such information, if appropriate.

(2) Pharmacists shall also provide purchasers with information on drug addiction treatment, including a local telephone number to get assistance, if appropriate.

(c) Hypodermic syringes or needles shall not be sold without a prescription unless the following conditions are met:

(1) The sale of needles shall include rigid puncture-resistant containers such as "sharps traps" in sufficient quantity to safely dispose of the needles sold.

(2) A purchaser shall not be sold more than 10 syringes or needles at any single purchase.

(d) The director of the division of public health services shall adopt rules, under RSA 541-A, relative to:

(1) The content, format and distribution of any materials required under this paragraph.

(2) Any other matter necessary to administer this paragraph.

II. Public and nonpublic schools including institutions of higher learning, shall be exempt from the [provisions of] ***requirement under*** paragraph I ***that such needles be sold only in registered pharmacies*** when the school is purchasing the syringes and needles for use in school science laboratory activities and assignments.

3 Reference Added. Amend RSA 318:52-d to read as follows:

318:52-d Recording and Filing of Prescription. Every person who dispenses, sells, furnishes, or gives away a hypodermic syringe or hypodermic needle or an instrument adapted for the administration of drugs by injection, upon the written or oral prescription of a duly licensed practitioner ***under RSA 318:52-c,*** shall record over his signature the date of sale or furnishing of the instrument and the number of instruments sold. This prescription shall be retained on file for a period of 4 years and shall be open to inspection by any public officer or employee engaged in the enforcement of RSA 318 or 318-B. A prescription filled in accordance with this section shall be sufficient authority, without the necessity of a renewal or reissuance, to permit subsequent sales or the furnishing of hypodermic syringes or hypodermic needles or instruments adapted for the administration of drugs by injection to the person to whom the prescription was issued for a period of one year from the date of its original issuance.

4 Prescription Required For Minors. Amend RSA 318:52-e to read as follows:

318:52-e Control or Possession of Hypodermic or Like Instruments Without Prescription Prohibited ***for Minors.*** No person ***under 18 years of age*** shall have under his control or possess a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of drugs by injection, [except a duly licensed physician, dentist, nurse, pharmacist, podiatrist, veterinarian, embalmer, a manufacturer or dealer in embalming supplies, registered wholesale druggist, manufacturing pharmacist, manufacturer of surgical instruments, official of any government having possession of the articles covered by this section by reason of his official duties, paramedical personnel acting under the direction of a physician or dentist, employees of a hospital, sanitarium or other licensed medical institution acting under the direction of its superintendent or officer in immediate charge, a carrier or messenger engaged in the transportation of such articles during the official performance of his duties, or a] ***unless the*** person [who] has received a written or oral prescription issued under RSA 318:52-c. For the purpose of this subdivision, no such prescription shall be valid which has been outstanding for more than one

year. [Provided, however, that the industrial use of hypodermic syringes, needles or instruments in any manufacturing process not utilizing drugs shall not be prohibited, so long as such use is under the proper supervision of a designated person or persons; and such hypodermic syringes, needles or instruments may be purchased for such use from a registered drug store without a written or oral prescription issued under RSA 318:52-c.]

5 Committee Established.

I. There is established a committee to study the issues relative to blood-borne diseases and the transmission of such diseases.

II.(a) The membership of the committee shall be as follows:

(1) Two representatives, one appointed by the speaker of the house and one appointed by the house minority leader.

(2) Two senators, one appointed by the senate president and one appointed by the senate minority leader.

(3) The commissioner of health and human services, or designee.

(4) A representative of the New Hampshire Hospital Association, appointed by such associates.

(5) A representative from the New Hampshire Health Care Association, appointed by such association.

(6) A representative of the New Hampshire Nurses Association, appointed by such association.

(7) The members appointed under subparagraph (b) by the commissioner of health and human services.

(8) A representative of the New Hampshire Pharmacists Association, appointed by such association.

(b) The commissioner of health and human services shall appoint the following committee members:

(1) A representative of an organization concerned with AIDS.

(2) A representative of licensed clinics.

(3) A representative of a manufacturer of medical devices, including non-reusable syringes.

(4) A representative of a health insurer.

(5) One representative of a drug addiction and treatment program.

III. The legislative members of the committee shall receive mileage at the legislative rate. The first meeting of the committee shall be held within 30 days of the effective date of this section.

IV. The committee shall submit a report to the speaker of the house, the president of the senate and the governor on or before November 1, 1993.

6 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill revises the laws that require a prescription to purchase a hypodermic needle to allow persons, except for persons under 18 years of age, to acquire such needles without a prescription. However, such needles are still to be sold only in registered pharmacies, except for public and nonpublic schools in certain cases. The bill also imposes certain informational requirements and other conditions before such needles can be sold.

The bill also establishes a committee to study blood-borne diseases.

SENATOR WHEELER: Senator Cohen, how do you think a person who is not responsible enough to stay off drugs and is stoned out of his mind is going to be responsible enough to dispose of their needle properly?

SENATOR COHEN: You can't get any simpler than this. The state authority can't possibly be there and hold the hand of every drug abuser. You are right. We can't do that. The best that we can do is to give them the information when they buy the hypodermic needles. They have written information as to the proper disposal as to where the nearest drug treatment rehabilitation center is and they can't buy it without getting this. It is very, very, simple. The facts are in, all researchers have shown that whenever in other states TAPE INAUDIBLE.

SENATOR PODLES: Senator Cohen, would you turn to the amendment on page two please? "The sale of needles shall include Sharps Traps", in referring to the Sharps Traps, the box that you showed, what is the cost of that?

SENATOR COHEN: $1.50.

SENATOR PODLES: Who will pay for that?

SENATOR COHEN: The person who is purchasing the needles. If they want the clean needles they have to purchase one of these.

SENATOR PODLES: What about the enforcement of that and then what are you going to do with that box once you have put the needles into the box, what about the enforcement? Where is the box going to go now with the needles in it?

SENATOR COHEN: The box gets thrown away. You can't get to the needle now.

SENATOR PODLES: Your amendment doesn't say anything about the enforcement here.

SENATOR COHEN: It is described in here. It is described in here with the directions that come with this. What must be done here, how to do it and how to dispose of it. I ask what's being done now, is that better? I don't think so. I think that it is much more of a risk right now, what we are doing now, which is nothing? They are just being thrown away and people can have easy access to them. We need to change that.

SENATOR PODLES: You're asking the pharmacist to do a lot of things here. You are asking them to divulge a telephone for such information to get assistance and you are really exposing them to a law suit to those who shoot up and overdose. I mean all of these pharmacists have to do this?

SENATOR COHEN: Senator Podles, I sincerely doubt that pharmacists mind making some money. They get paid for the work that they do. They are going to get paid for the work that they do here. This will make them money. This is not much of an effort for them. They will profit from this. They are not put at risk in this. I haven't heard any objections from the pharmacists to this measure.

SENATOR PODLES: Would you also believe that under . . . this prohibits the pharmacies under the drug paraphernalia criminal statutes to possess with intent to inject any kind of controlled substance. So it will still be illegal even with your amendment. Do you believe that?

SENATOR COHEN: I am not sure that I understand your question. The person who is purchasing that needle will have purchased it legally. It will no longer be illegal.

SENATOR PODLES: What I am saying is that I have the controlled drug act in my hand here. It prohibits pharmacies under the paraphernalia criminal statutes to "sell, to inject, or to offer for sale, any controlled

drug", so even if that amendment passes, under the criminal statute it is still illegal. I also have something that I would like to share with you Senators. It was an article that was in the Union Leader and it was dated, Tuesday, May 11. "Teen arrested in Dover school stabbings. Police have arrested a 13 year old Dover Junior High School student for allegedly stabbing two other students with a syringe. Police say that the boy whose name was not released, attacked other students on May 3. The boy was charged with second degree assualt, reckless conduct and possession of drug paraphernalia. He was released to the custody of his parents. The principal said that the syringe was used for insulin." What I am trying to say here is that those needles will be used for weapons. So I still feel that we should not pass this amendment. I believe that more people will be using needles and drugs and that the spread of AIDS will increase rather than decrease within the drug communities. This bill should not pass. It will actually be one of the worst bills in the nation. I urge you not to pass it.

SENATOR COHEN: Senator Podles, are you aware that this bill has nothing to do with the drug problem? That this bill does in no way legalize drugs. We are not calling for legalizing drugs whatsoever. Nobody is proposing to make drugs legal. That is completely separate from what this bill is about. And would you also believe that the needle used in that case of the stabbing was not in fact a hypodermic needle and that a person can have access to a sewing needle and still use that as a weapon?

SENATOR PODLES: Senator, I still believe that this is not a bill to be passed in New Hampshire only because some of the New England states still require prescriptions and New Hampshire will be a haven for this kind of drug abuse.

SENATOR BARNES: A couple of weeks ago when this bill came up before us, one of my questions was, what are you going to do about the disposal of these needles? That bothered me a great deal. I am still not 100 percent sure of the disposal of needles. But I do want to say that I think that Senator Cohen and the people who worked with him on doing and showing us what he has here, have done a yeoman's job on it; and I, for one, appreciate the effort that you put into it.

SENATOR BLAISDELL: Mr. President and members of the Senate, I rise in support of Senator Cohen and the bill that he has presented before us. Last Friday. I flew to New Haven, Connecticut, and I was in an aftercare center in New Haven, Connecticut. Most of you people know what I do for work so it is no secret that I am in drug and alcohol abuse. This is exactly what they do in the state of Connecticut. They have the same type of disposal unit as you have here. I think the most important thing of all is that we are going to be saving lives, it is important. You are going to save lives, it is very important. If you would like to see some of them I will take you there anytime that you want to come with me. But you are going to save lives with this. I, by the way, am a diabetic as you know, and I have to eat on time and so forth, and Senator Hough has been with me a long time and he doesn't even think of me having to eat at noon time and then he hands you a piece of pizza that I am not supposed to eat, so what can I say? I would take a hamburger over there, Senator Barnes, if you ever have a few extra in your pocket, a few extra slips, I would be willing to take them. Really, this would save some lives. For God's sake, it is a problem. It is a very serious problem out there and if you save just one person's life it is worth it. There is the way to dispose of them and it is right there and it is safe and that is what I do everyday. I take two

shots of insulin. I should have taken one at 5:30 but my sugar is good enough anyway right now. It will save lives, we dispose of them and it protects people to have them as Senator Cohen just said. That is the way to do it. But please, it saves lives, pass the bill. We are not going to be a haven for anybody. I think Vermont, by the way, also has something like this and Connecticut just passed it, I know that I just talked to the Senators down there last Friday. So please pass the bill and save some lives.

SENATOR LOVEJOY: Senator Blaisdell, I have been struggling trying to find a way to support this and I asked Senator Cohen and the others to do some things and they have done them. I am referring to the disposal problem as one of them. I would like to know your opinion because I respect your opinion on the question of drug paraphernalia and how does this play? This sounds to me like it could be a serious contradiction of what our state policy says if we say that it is illegal to have such paraphernalia and then we say it is legal to sell it?

SENATOR BLAISDELL: I don't think that it is a contradiction, Senator. If I had any kind of advice to offer on this bill, if I wanted to do something different to it, I would probably do maybe, to get a collection agency, get an agency where you could put all of these needles and maybe send them to some clinics to find out just how many . . . I mean you can tell from these needles how many people have been almost infected by those needles. So I mean, Connecticut seems to think that this is a very, very, good way to do it and it is working in Connecticut. I have talked to many counselors down there, quite a bit, in fact about 12 last Friday afternoon, and they say that it is working. I don't think that it is a contradiction, Senator Lovejoy. I know that maybe there are some lines there that we may be crossing, but I think that it would be in the best interest of the health of the people in this state if we do this.

Recess.

Out of recess.

Floor amendment adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Colantuono.

Seconded by Senator Podles.

The following Senators voted Yes: Lamirande, W. King, MacDonald, Fraser, Disnard, Roberge, Blaisdell, Baldizar, McLane, Russman, Shaheen, Hollingworth, Cohen.

The following Senators voted No: Lovejoy, Wheeler, Pignatelli, Colantuono, Podles, Barnes, J. King, Bourque, Delahunty.

Yeas: 13 - Nays: 9

Motion of ordering to third reading is adopted.

Senator Currier (Rule #42.)

SPECIAL ORDER

HB 136-FN, an act pertaining to the authority and operation of the Public Utilities Commission. Executive Departments and Administrations committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

SENATOR COLANTUONO: Am I able to stand on my report from yesterday, Mr. President?

SENATOR HOUGH (In the Chair): Yes, Senator.

SENATOR COLANTUONO: It is a good bill, pass it.

Committee amendment adopted.

SENATOR HOLLINGWORTH: I think that it is important if you have a copy of the bill in your folder to take it out. I think that you need to look at it as we go along. This bill was introduced to do some housekeeping for the PUC. First, I brought in an amendment which was rejected by the committee, and in my looking at this bill I came across another problem. If you look at page one, there is a section of the bill, on section two on page one. It says, "expenses of investigation and that is usually the area where utilities bring up their problem to the commission and they charge the utility for the investigation and the utility, then in turn, turns around and then charges their customers for their investigation, which is the general procedure. But this bill has been expanded so that it doesn't just cover utilities now. Because if you look at page two, what they have done on the top line, it says, "or for any other matter which it requires the commission's approval". So what happens is that could open up the whole area where the PUC would be taking any investigation procedures. What they have done, inadvertently, I think, is that they have left out a section that you can find in section two. If you look half way down page three, section two, the eighth line down from the bottom, you will see a line that starts, "the commission shall not, however, access any such cost against the office of the consumer advocate, or against any voluntary corperation not for profits or organizations or for any municipal unless a municipality is involved in a procedure under the commissions pursuant to RSA 38". RSA 38 is if a town has its own water or its own lights. So what they inadvertently left out was the opt out clause for the people to bring up a case and not have to pay for an investigation who are, non profit, the consumer advocate or against any voluntary cooperation, not for profits or organizations or for any municipal unless by a municipality. And I don't think it was intentionally done. Because certainly they wouldn't want to charge those people for bringing a case before the PUC and having a case investigated. So that is the first amendment and that is all that it does. The second amendment is that right now, presently, under the law and this is the current law, there is a committee established to look at the decommissioning. I am familiar with this because, way back in I don't remember in what year, I started the decommissioning group. When the committee was established, the committee was made up of one person who is a resident of the town and the city in which the facility is to be located who shall be appointed by the selectman of the town or the mayor or the council of the city. The Chairman of the Public Utilities Commission, and this is the point, the Chairman and the Vice Chair of the Fiscal committee. My change would be to change from the Chairman of the Fiscal committee and the Vice Chair of the Legislative Fiscal committee would be to change that just to say, "they would be appointed". If you would look at the amendment you will see it in the brackets. It would say, "one House member appointed by the Speaker of the House and one Senator". Now currently, Bill Kidder has been serving on that committee and he has been doing it for years, he should be there, he is familiar with it, he understands it. Under the current law that we have, Bill should no longer be serving and I think that that is wrong. The President of the Senate and the Speaker of the House should be able to appoint anybody who they think is qualified to be on that decommissioning hearing and they shouldn't be restricted to just having it the Chair of the Fiscal com-

mittee or the Vice Chair. You know, they are very busy people and I am sure that they find it impossible to attend. In fact, they have not attended over the years. They have not been to one hearing. I think that it is important that we allow the President of the Senate and the Speaker of the House to appoint who they choose and that those would be the two housekeeping measures in my amendment and I ask you for ought to pass with amendment.

Senator Hollingworth offered a floor amendment.

2875B

Floor Amendment to HB 136-FN-LOCAL

Amend RSA 365:17, I as inserted by section 2 of the bill to read as follows:

365:37 Expense of Investigations.

I. Whenever any investigation shall be necessary to enable the commission to pass upon any petition for authority to issue stocks, bonds, notes, or other evidence of indebtedness, for authority to operate as a public utility ***or to expand operations as a public utility,*** to make extensions into new territory, to discontinue service, to condemn property for flowage rights and dam construction, or for authority to sell, consolidate, merge, transfer, or lease the plant, works, or system of any public utility, or any part of the same, ***or for any other matter which requires the commission's approval,*** the petitioner shall pay to the commission the expense involved in the investigation of the matters covered by said petition, including the amounts expended for experts, accountants, or other assistants[, but not including any part of the salaries or expenses of the commissioners or of employees of the commission or the fees of experts testifying as to values in condemnation proceedings]. ***The commission shall not, however, assess any such costs against the office of the consumer advocate or any voluntary corporation, not-for-profit organization or any municipality. In addition, in the case of any other petitioner who is not a utility, the commission may, on a case by case basis, assess the costs of an investigation in a manner the commission finds to be appropriate and equitable. Such expense shall not include any part of the salaries or expenses of the commissioners or of the employees of the commission or, unless the proceeding is being conducted pursuant to RSA 38, the fees of experts testifying as to values in condemnation proceedings.***

Amend the bill by inserting after section 5 the following new section and renumbering the original section 6 to read as 7.

6 Committee Membership Changed. Amend RSA 162-F:15, II to read as follows:

II. Each committee shall consist of one person who is a resident of the town or city in which the facility is to be located and who shall be appointed by the selectmen of the town or the mayor and council of the city, the chairman of the public utilities commission, [the chairman and the vice-chairman of the legislative fiscal committee] ***one house member appointed by the speaker of the house, one senator appointed by the senate president,*** the state treasurer or his designee, the commissioner of the department of health and human services or his designee, the commissioner of the department of safety or his designee, and a representative of the lead company as designated by the owner or owners of the facility.

SENATOR CURRIER: As the Chairman of the Executive Departments committee that heard this bill, I have to stand in strong opposition to this floor amendment. With all due respect to Senator Hollingworth, the language that she referred to was inadvertently being left out of the bill, was the subject of much discussion and is not new. That subject was presented a longer way through the process and it was rejected, and this compromise language that is in it is what has been inserted in the bill. With regard to Mr. Kidder and the fact that he was no longer on the Fiscal committee, my understanding from the testimony that we heard when the bill was rereferred back to committee was that Speaker Burns was going to be taking action to correct that. And I believe that the members of the Fiscal committee because of their expertise with the Fiscal committee matters, are probably more knowledgeable about overall budgetary constraints and so forth that it should stay the same. The committee, I believe, unanimously rejected these types of moves on this bill and the committee stands at its recommendation. And if in fact that the bill does end up passing with this amendment on it, I will ask for the bill to be killed or inexpedient to legislate rather than have it go through with this amendment on it after not having a serious public hearing on some of the other matters that are related.

SENATOR HOLLINGWORTH: Senator Currier, are you aware that the Vice Chair of the Fiscal and the Fiscal Chair have not attended any of the meetings?

SENATOR CURRIER: I am aware of that. But I am also aware that this Senate and House members routinely do not attend meetings that they are scheduled at.

SENATOR HOLLINGWORTH: Don't you think that in a unique situation where we are talking about decommissioning and the debt of the state is important, that the members on a small committee like this should attend? And that in fact that we have one member who is attending, and signing, and voting, who could be challenged in his vote because he is not the member who is designated in the law as it presently stands?

SENATOR CURRIER: I would agree that there are some problems, but as I said, our understanding from discussions in the committee hearing was that the Speaker of the House has been made aware of the fact and it has been indicated that there are measures under way now to correct that. I would assume that now that it has been brought to the attention of the President of the Senate in the case of the Senate member, maybe that would be taken care of as well.

SENATOR HOLLINGWORTH: You are aware that the law specifically defines that it has to be the Vice Chair of the Fiscal or the Chair and that it cannot be appointed by the Speaker of the House? That is precisely what my amendment would do. It would be to give the latitude of both the Speaker of the House and The President of the Senate to appoint somebody else. It would mean that you would have to name and make the Vice Chair . . . and they would have to attend, otherwise you have no representation, is that not true?

SENATOR CURRIER: We are on the verge of running debate in terms of the lines in question that are going on, but with regard to that, if the law says that it is the Chairman and the Vice Chairman of the Fiscal committee, then it is up to the Speaker of the House and the President of the Senate who control those two people, who are the Vice Chair and the Chair. If Bill Kidder is attending those meetings, then he should not, and

whoever is the Vice Chairman of the Fiscal committee, Senator Blaisdell, should be attending, and the Chairman, Channing Brown, should be attending those meetings and not Bill Kidder and whoever else who was designated before.

SENATOR HOLLINGWORTH: I am surprised, Senator Currier, that you are saying that it was the intent of the committee to charge for the investigation of cases before the PUC for the consumer advocate, for the voluntary corperations, for nonprofit organizations and for municipalities. Isn't that a 28-A case?

SENATOR CURRIER: That would be something for the Supreme Court to answer and I don't sit on the Supreme Court, so I couldn't answer that question.

SENATOR HOLLINGWORTH: Wouldn't it be easier to resolve it by putting in this simple clean-up language rather than have our municipalities have to go to court?

SENATOR CURRIER: I can't really answer that question.

SENATOR W. KING: Senator Currier, I think I understand the second part of this in terms of the committee membership change. But I am trying to understand the first part in terms of the actions that you're, or actions that your committee, chose not to take. Would you explain what the current law is and how this proposal deviates from the current law and why it is that the committee chose not to adopt this proposal?

SENATOR CURRIER: I could do that with an adequate recess, but I don't have the bill before me, nor the statute, so I couldn't do that at this moment. I could, with an adequate recess to get my papers in front of me to go by, I just don't have those at my fingertips right not.

Recess.

Out of recess.

SENATOR CURRIER: Senator King, I am going to answer this to the best of my ability having reviewed the information. The current law gives the commission the flexibility to access cost to the proper parties. The amendment that Senator Hollingworth is proposing takes away some of that flexibility. An example that I can give to you is that if the consumer advocates group or the nonprofit group or so forth brings a case before the commission in terms of the investigation, they would not be charged. Or, for example, if Budweiser who recently took the utility to the commission who can afford the charges, obviously the commission ought to have the flexibility to charge those charges to Budweiser and not to the utility. Because in fact, ultimately, the consumer would pay because those charges would be passed on to the utility and, ultimately, come through the rate process. So the difference between the bill, the current law is that it adds in the flexibility.

SENATOR HOLLINGWORTH: On page two of the amendment. The amendment says, "In addition, in the case of any other petitioner who is not a utility, the commission may, on a case by case basis, assess the costs of an investigation in a manner the commission finds to be appropriate and equitable". That is in the bill, that has not changed. All that it has added is that it allows that the nonprofit organizations be exempt, is that not true?

SENATOR CURRIER: The problem is that because of the complexity of this amendment and the fact that the committee and a full blown hearing hasn't taken place, that is what I am really uncomfortable with and that is why I cannot support this floor amendment at this time.

SENATOR COLANTUONO: Senator Currier, focusing on the second piece of the floor amendment which is the committee membership, isn't it true that if the Chairman of the Fiscal committee and the Vice Chairman of the Fiscal committee by our procedures have to be a democrat and a republican?

SENATOR CURRIER: That is the way that I understand it.

SENATOR COLANTUONO: So that if this amendment passed, wouldn't it be possible to have one party shut out of the process?

SENATOR CURRIER: That is true if this amendment is adopted.

SENATOR BLAISDELL: I would like to speak on the floor amendment offered by Senator Hollingworth. I guess that I would question what was just said on the floor. Whether or not . . . I realize that Representative Channing Brown is a republican and that I am a democrat as the Vice Chairman, but I don't believe that that is in the statute. In fact, he doesn't even have to appoint me as the Chairman of Finance. He did that himself, so that isn't even in the statute, they don't have to do that. So again, either it is misinformation or what, but I don't believe that that is in the statute in the Fiscal committee's make up and you wouldn't lose.

A roll call was requested by Senator Hollingworth.

Seconded by Senator Shaheen.

Paired Votes: Senator W. King, Senator Podles.

The following Senators voted Yes: Blaisdell, Baldizar, J. King, Russman, Shaheen, Hollingworth, Cohen.

The following Senators voted No: Lamirande, MacDonald, Fraser, Lovejoy, Currier, Disnard, Roberge, Wheeler, Colantuono, Barnes, Bourque, Delahunty.

Senator Pignatelli & Senator McLane (Rule #42).

Yeas: 7 - Nays: 12

Floor amendment fails.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Fraser moved to have HB 382, an act changing the annual rate of interest on judgments and business transactions, taken off the table.

Adopted.

HB 382, an act changing the annual rate of interest on judgments and business transactions. Banks committee.

SUBSTITUTE MOTION

Senator Lamirande moved re-refer on HB 382 an act changing the annual rate of interest on judgments and business transactions. Banks committee .

SENATOR LAMIRANDE: It is my opinion that the present rate of interest on judgments at 10 percent does in fact handle the problems that are being addressed as interest on judgments presently, in that when an individual has to hire a representative, an attorney to handle their case, they are, more often then not, faced with the problem of having to borrow the money in order to do so. And at that time what you will see happening is that the amount that they are borrowing at far exceeds the amount of

interest on judgment. The only time that the amount is paid on the interest on judgment is when they win their case and it would compensate them for the amount that they would have to borrow; however, I do feel that if a compromise could be reached on this matter, that that is why I have suggested that it would be re-referred. There seems to be a large gap on the rate of interest that is charged on a loan as to compared to the amount on savings and this problem would need to be addressed. The proposal that was in the committee was tied to the treasury bill rate which I felt was too volatile; therefore, I urge the Senate to vote on re-refer to committee.

Motion of re-refer is adopted.

RECONSIDERATION

Senator W. King moved reconsideration on HB 330 relative to the authorities of municipalities to designate certain roads as class V highways.

Adopted.

HB 330, relative to the authorities of municipalities to designate certain roads as class V highways.

SENATOR W. KING: There is no difference in this floor amendment than in the floor amendment that we adopted the other day; however, the floor amendment that we adopted the other day inadvertently eliminated the committee's amendment because of the numbering on it. So I am just asking you to readopt this amendment so that it doesn't eliminate the rest of the committee's amendment.

Senator W. King offered a floor amendment.

2806B

Floor Amendment to HB 330

Amend the title of the bill by replacing it with the following:

AN ACT

establishing a committee to study parking at Hampton beach state park, returning certain state-owned land to the town of Belmont, and exempting community organizations from having to obtain a permit to erect signs advertising nonprofit events over certain highways.

Amend the bill by replacing section 5 with the following:

5 New Section; Exemption from the Permit Requirement. Amend RSA 236 by inserting after section 72-a the following new section:

236:72-b Exemption from the Permit Requirement. No nonprofit community organization shall be required to obtain a permit under RSA 236:72 to erect an advertising device, as defined in RSA 236:70, I, which promotes a nonprofit community event. Nothing in this section shall be construed to allow advertising devices to be erected in areas or in such a manner as is otherwise precluded by law.

6 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a committee to study the parking at Hampton beach state park.

The committee shall report to the governor, the senate president and the speaker of the house on or before November 1, 1993.

The bill returns certain lands, acquired by the state by eminent domain, along the shore of Lake Winnisquam to the town of Belmont if the department of transportation does not choose to construct a bypass on the property within the next 2 years.

This bill also exempts community organizations from having to obtain a permit to erect signs promoting nonprofit community events.

Floor amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Cohen moved to have HB 139, an act relative to requirements for transportation of deer and official seals for fur-bearing animal skins, taken off the table.

Adopted.

HB 139, an act relative to requirements for transportation of deer and official seals for fur-bearing animal skins.

Question is on the committee amendment.

Amendment adopted.

SENATOR COHEN: This amendment has been called the Uncle Buck amendment, if you will. It is to help some people who are in the business of raising venison to create venison sausage. Right now they are able to sell the venison sausage in restaurants, but they are not able to sell it in convenience stores. It is sort of like a beef jerky, except that it's called Uncle Buck. Right now the current law prohibits that and this would allow it to be sold. No there are no samples yet, but if you pass this we will probably have some samples.

Senator Cohen offered a floor amendment.

2817B

Floor Amendment to HB 139

Amend the title of the bill by replacing it with the following:

AN ACT

relative to requirements for transportation of deer, official seals for fur-bearing animal skins, permitting the sale of imported venison to retail outlets and illegal night hunting.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 8:

4 Sale of Imported Venison; Sale Expanded to Retail Outlets. Amend RSA 212:30-d, I to read as follows:

I. Notwithstanding the provisions of RSA 208:11, venison, including the species red deer and elk (Cervus elaphus), but not including Virginia white-tailed deer (Odocoileus virginianus), imported from outside the state may be possessed, bought, and sold for use as food in [restaurants] ***retail outlets*** licensed pursuant to paragraph IV; provided that for each shipment there shall be a bill of sale bearing the date of purchase, the species of venison, the total weight of the shipment, and the place of origin. Said bill of sale shall remain with the shipment until the entire shipment has been sold [to restaurant patrons].

5 Retail License to Sell Imported Venison; Sale Expanded to Retail Outlets. Amend RSA 212:30-d, III to read as follows:

III. Resident and nonresident wholesalers who wish to sell imported venison in this state as permitted in paragraph I shall procure a wholesaler's license from the department of fish and game to do so, the fee for which shall be $50. Said license shall expire on December 31 of each calendar year. Wholesalers shall provide bills of sale in triplicate, one copy of which shall be forwarded to the department of fish and game within 10 days of the sale, another copy of which shall be given to the [restaurant owner] ***owner of the retail outlet,*** and the third copy of which shall be retained as a file copy by the wholesaler.

6 Wholesale License to Sell Imported Venison; Sale Expanded to Retail Outlets. Amend RSA 212:30-d, IV to read as follows:

IV. Any ***retail outlet, including a*** hotel or restaurant wishing to sell venison as described in paragraph I [imported from outside the state] ***or in RSA 212:30-e, I*** shall be required to obtain a license from the department of fish and game for a fee of $10 annually and shall have a bill of sale accompanying said venison pursuant to paragraph I ***or RSA 212:30-e, III.*** This license shall expire on December 31 of each calendar year. The bill of sale shall bear the species of venison, date of purchase, the total amount purchased, original place of origin, and wholesaler's name and address. ***Retail outlets, including*** hotels and restaurants, shall only sell venison purchased from a licensed wholesale dealer as set forth in paragraph III ***or licensed propagator as set forth in RSA 212:30-e, I.***

7 Retail License to Sell Venison; Limitations Removed. Amend RSA 212:30-e, VI to read as follows:

VI. Any ***retail outlet, including a*** hotel or restaurant wishing to sell deer carcasses or venison obtained pursuant to this section shall be required to obtain the license described in RSA 212:30-d, IV and shall comply with all the provisions therein.

AMENDED ANALYSIS

This bill:

I. Modifies the requirements for transportation of deer and requires fur-bearing animal skins to bear an official seal prior to sale.

II. Inserts a reference to birdshot in an RSA provision on illegal night hunting and modifies a presumption of knowledge or belief under the illegal night hunting statute.

III. Permits the sale of imported venison at retail outlets. Current law permits such sale at restaurants.

Floor amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Disnard moved to have HB 548, an act providing staggered terms for county commissioners in Carroll county, taken off the table.

Adopted.

HB 548, an act providing staggered terms for county commissioners in Carroll county.

SENATOR DISNARD: This amendment could affect and will affect everybody in this room. The town of Unity is a community of about 1,000 people. In the town of Unity is located the Sullivan County Home. Everyone here has a county home in a community in their area or more than one. Presently the town of Unity must pay the burial cost of the indigent who die at that facility. I would like to call your attention to the

amendment. I would also like to call your attention to the mandate which was passed in November 1984 or the 28-A, I think it is referred to. Prior to 1985, "if a pauper shall die in any town, the overseers or the public welfare shall cause him to be decently buried at the expense of the town". This was changed to be effective in January 1986 and it was passed in 1985 after the mandate. Any person in a town or city who is poor and unable to support himself shall be known as a town or city assisted person. Excuse me, I read the wrong one. What happens now is that in 1985 the bill was changed so that, "if an assisted person shall die in any town or city, the overseers shall cause them to be decently buried at the expense of the town or the city". What changed was that it changed from, "assisted person", what the law now says is that the town of Unity or your town, for anyone who was buried, must pay for the cost. That changed from before the mandate, the community where he lived or resided or they were placed in the county home paid the cost. All this is reverting back to the original charge and Unity and I have been to the Attorney General's office and I want to explain very carefully, it was an informal discussion, nothing was written. I showed them the history of all of the laws that were passed since 1830 something relating to this problem and they think that I have a very good case in the town of Unity because of the mandate does not have to pay the burial of paupers that reside at the county home. All that this does is to go back to the original law and indicates that the town where the person resided shall be responsible for paying the burial cost of any indigent from their community that dies at the county home. This can affect any one of you people. They shouldn't be paying a cost at being told by the state that they have to pay now because the law was changed and it's a mandate and it was changed after the mandate went into affect.

Senator Disnard offered a floor amendment.

2773B

Floor Amendment to HB 548

Amend the title of the bill by replacing it with the following:

AN ACT

providing staggered terms for county commissioners in Carroll county and relative to the payment of burial expenses for assisted persons who die in county nursing homes.

Amend the bill by replacing section 3 with the following:

3 Payment of Burial Expenses for Assisted Persons. Amend RSA 165:3 to read as follows:

165:3 Burial.

I. If an assisted person shall die in any town or city the overseers of public welfare shall cause [him] ***such person*** to be decently buried at the expense of the town or city.

II. Notwithstanding any provision of paragraph I to the contrary, if an assisted person dies in a county nursing home, the overseers of public welfare shall cause such person to be decently buried at the expense of the town or city in which the assisted person was a resident, as that term is defined in RSA 21:6, on the date on which the assisted person entered the county nursing home.

4 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill changes the method for electing county commissioners in Carroll county. Beginning with the 1994 state general election, the county commissioners are elected on a staggered basis by all the voters of the county.

The bill also provides that if an assisted person dies in a county nursing home, the person's burial expenses are to be paid for by the town or city in which the person was a resident on the date on which the assisted person entered the county nursing home.

Floor amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Disnard moved to have HB 558, an act requiring the Board of Education to submit its proposed rules relative to standards and statewide testing and assessment to the standing legislative education committees for approval or objections, taken off the table.

Adopted.

HB 558, an act requiring the Board of Education to submit its proposed rules relative to standards and statewide testing and assessment to the standing legislative education committees for approval or objections.

SENATOR DISNARD: I had tabled HB 558 at the request of the new Chairman of the State Board of Education who wanted to discuss it. We have discussed it and this is the last day and I wish to report for the committee HB 558 of ought to pass.

Question is on the committee report of ought to pass.

SUBSTITUTE MOTION

Senator Colantuono moved to re-refer to committee HB 558, an act requiring the Board of Education to submit its proposed rules relative to standards and statewide testing and assessment to the standing legislative education committees for approval or objections.

SENATOR MCLANE: Senator Disnard, we have had a long and interesting process together about the assessment bills and the rulemaking authority of the state board. I find myself somewhat disturbed that at the last minute we have brought in a bill to be re-referred. I wonder if you have spoken to the other sponsors of the bill and if this is agreed upon by your Education committee and by the House Education committee?

SENATOR DISNARD: You are saying things, Senator, that I did not use a word of. I am trying to report out the committee's report of ought to pass motion that was requested. I did not ask for a re-referral. I didn't mention it. But I will since you made a statement earlier. I am making this statement and I wish to call your attention to the committee. What Ovide Lamontagne, which you and the Governor and several other people in two other bills, agreed to what he wanted, he is concerned about a section of this bill. I am reporting the committee's report of ought to pass, and he is concerned about a section of this bill that he feels is redundant relating to what our past related to 1995 and 224, he feels is redundant and not needed. I am willing, and able, and ready, to report out the committee report of ought to pass.

SENATOR MCLANE: Would you support ought to pass rather than re-refer?

SENATOR DISNARD: Ma'am, if I am the chairman of the committee and I have a responsibility and the committee's report was ought to pass and they asked me to report it out, regardless of anything that has been passed since then, I am out of order at this moment. But I would expect anyone else to, to report the committee's request out and do my best to pass it.

SENATOR MCLANE: Thank you.

SENATOR LOVEJOY: I rise to speak in favor of the motion to re-refer. I speak in favor of it because I think that there are some things in here that should be discussed. One of those things of course deals with standards. We haven't discussed standards as far as the legislative Education committee's reviewing standards, that is something that should be discussed before we act upon it. The other thing of course is that I concur with what Senator McLane said that we have gone through a long process on these other bills and we have come to agreements that were agreeable to everyone but not especially popular with everyone and this seems to undo some of that agreement that we seemed to have reached. So I would urge your vote for re-referral.

SENATOR MCLANE: Senator Lovejoy, you said that there were matters to do with state standards and rules that had not been discussed. Isn't it true that this bill has been through the entire legislative process? It has gone through the House committee and it is ought to pass out of the House committee and it has come over to the Senate and it has gone through the Senate Education committee and it is ought to pass out of that committee. That to me doesn't mean that the standards have not been discussed. It is true that we have a new Chairman of the Board of Education who is newly appointed and it seems to me what we are doing at this point is listening to his point of view after the legislative process is finished. Isn't it true that this has gone through the process?

SENATOR LOVEJOY: That could very well be true that I was a Senator sleeping at the switch when that word slipped by. But in any case, the standards were new to me.

SENATOR DISNARD: Senator McLane, would you believe that HB 558 had several hearings, two to be exact, one in the House and one in the Senate? Would you believe that all that this bill does is establish a committee between the House and the Senate Education committee to advise the Board of Education on any possible rules that they wish to make in terms of assessment and standards? Would you believe that the emphasis behind this bill was when the past Chairman of the State Board of Education, overnight, convinced the Board of Education that they should change minimum standards which took two years for elementary to put in effect and hold hearings, they changed it without any hearings. Would you also believe that the contents of this bill would assist the state Board of Education if they should make, suggest some rules like that, that this committee compromises House and Senate Education members, could assist the state Board and advise them politically that is not the thing to do, it might help the entire education process in the state?

SENATOR MCLANE: I would believe that. And I thank you for that good explanation of the importance of the bill.

Question is on the substitute motion of re-refer.

Recess.

Out of recess.

Division requested.

Yeas: 7 - Nays: 16

Motion of re-refer fails.

Ordered to third reading.

Senators Colantuono and Wheeler in opposition to HB 558.

TAKEN OFF THE TABLE

Senator Roberge moved to have HB 150, an act prohibiting hunting, fishing and trapping by a person who is in default with any judicial system in the state, taken off the table.

Adopted.

SENATOR ROBERGE: Mr. President and members of the Senate, I rise in support of the committee amendment.

Question is on the committee amendment.

Amendment adopted.

Ordered to third reading.

SENATOR HOUGH (In the Chair): Just bear with me because there is some information here that you may want. You can listen now or you can listen later, but you're going to be put in recess real soon. I would tell you that HB 1 will be printed Friday night and delivered to you by the State Police over the weekend and so will HB 25. Okay, so you should know that. The Senate stands in recess.

Recess.

Out of Recess.

INTRODUCTIONS

NOTICE OF RECONSIDERATION

Senator Podles has served notice of reconsideration on HB 172, an act relative to the Oil Discharge and Disposal Cleanup Fund.

NOTICE OF RECONSIDERATION

Senator Fraser has served notice of reconsideration on HB 663, an act making technical corrections to the securities laws and to the Business Corporations Act and repealing two obsolete provisions regarding corporate stock.

NOTICE OF RECONSIDERATION

Senator W. King has served notice of reconsideration on HB 61, an act relative to the rate of the Real Estate Transfer Tax.

NOTICE OF RECONSIDERATION

Senator W. King has served notice of reconsideration on HB 62, an act relative to the Meals and Rooms Tax for the period beginning July 1, 1993, through June 30, 1995.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

SB 151-FN-A-LOCAL, requiring an animal population fee in addition to licensure fees for certain dogs and using the increase to fund a state animal population control program and continually appropriating the companion animal population control fund.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 151-FN-A-LOCAL, requiring an animal population fee in addition to licensure fees for certain dogs and using the increase to fund a state animal population control program and continually appropriating the companion animal population control fund.

Senators Cohen & Roberge moved concurrence.

Adopted.

COMMITTEE REPORTS

HB 1-A, an act making appropriations for the expenses of certain departments of the state for the fiscal year ending June 30, 1994, and June 30, 1995. Finance Executive committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.